104

S. HRG. 104–43

NAVAJO-HOPI RELOCATION HOUSING PROGRAM

Y 4. IN 2/11: S. HRG. 104-43

Navajo-Hopi Relocation Housing Prog...

HEARING

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

ONE HUNDRED FOURTH CONGRESS

FIRST SESSION

ON

S. 349

TO REAUTHORIZE APPROPRIATIONS FOR THE NAVAJO-HOPI RELOCATION HOUSING PROGRAM

MARCH 15, 1995
WASHINGTON, DC

AUG 15 1995

U.S. GOVERNMENT PRINTING OFFICE
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NAVAJO-HOPI RELOCATION HOUSING PROGRAM

WEDNESDAY, MARCH 15, 1995

U.S. SENATE,
COMMITTEE ON INDIAN AFFAIRS,
Washington, DC.

The committee met, pursuant to notice, at 2:30 p.m. in room 485, Senate Russell Building, Hon. John McCain (chairman of the committee) presiding.

Present: Senators McCain and Hatch.

STATEMENT OF HON. JOHN McCAIN, U.S. SENATOR FROM ARIZONA, CHAIRMAN, COMMITTEE ON INDIAN AFFAIRS

The CHAIRMAN. The committee will come to order.

Let me begin by mentioning that this will be the last hearing in which our dear friend and comrade in arms, Eric Eberhard, will be with us. He is leaving after many years to join the private sector. It is very difficult to find adequate words to praise his efforts, not only on behalf of this committee, but of Native Americans throughout this country. There has not been a single piece of legislation that was passed by this committee that wasn't either written by or substantially contributed to by Eric Eberhard. We will miss him more than I am able to describe, and we appreciate all of his years of service—as I say, not just to me and my fellow Arizonans, but to Native Americans, Native Hawaiians, and Native Alaskans.

So we thank you, Eric. I know you don't like to hear me say it, but I think I should say it at least once.

We are here today to receive testimony on S. 349, a bill sponsored by myself and Senator Kyl to reauthorize the Navajo-Hopi relocation housing program for the 1996 and 1997 fiscal years. Our witnesses will be Chris Bavasi, Executive Director of the Office of Navajo and Hopi Indian Relocation; Ferrell Secakuku, Chairman of the Hopi Tribe; and Albert Hale, President of the Navajo Nation. I want to thank all of the witnesses for being with us today.

Under the current law, the authorization for appropriations for the relocation housing program will expire at the end of the 1995 fiscal year. As I understand the new rules which now govern the consideration of appropriations bills in the House of Representatives, any bill which contains an unauthorized appropriation will be subject to a point of order. Accordingly, the Committee on Appropriations in the House is under pressure to carefully scrutinize every appropriated item and to exclude those items for which there is no authorization. In order to ensure the continuation of the relo-

cation housing program, S. 349 will need to be enacted before the House takes up the Interior and Related Agencies appropriations bill in May or June.

This background is important for our witnesses to understand because it reflects the new realities which govern funding requests here in the Congress as a result of the elections last November. The American people sent a very clear message to every elected official: stop the waste, reduce spending, downsize Government, cut the deficit and cut taxes. In the wake of the election, major changes occurred in the way that Congress is approaching spending questions.

The relocation program is particularly vulnerable to reductions and possible elimination. As many of you know, in 1974 when the Land Dispute Settlement Act was passed, the program was estimated to cost $40 million and to involve fewer than a thousand families in both tribes. All of the eligible families were to have been determined by July 1986. As of this fiscal year, the Congress has appropriated about $356 million. Let me repeat: An original estimate of $40 million, and as of this fiscal year the Congress has appropriated about $356 million. Of this amount, about $235 million has been expended on the relocation housing program which is the subject of S. 349. By any standard, the original cost estimates for the settlement act were severely understated.

Since 1974, about 4,432 Navajo and Hopi families have applied for relocation benefits. Of those, 3,264 have been certified eligible and 1,168 have been denied benefits. Of those who were denied benefits, 218 are engaged in active appeals. As of the end of January of this year, 2,518 families had been relocated and 746 eligible families were awaiting their benefits.

In a report recently filed with the Congress, the Office of Navajo and Hopi Indian Relocation has advised us that the number of eligible families could rise by as much as another thousand families, depending on the outcome of appeals and other legal challenges. In addition, there are somewhere between 50 and 250 Navajo families on the Hopi Partitioned Lands who have never applied for relocation benefits.

The Hopi Tribe has suggested that relocation should be completed in 3 years. The report submitted to the Congress by the Office of Navajo and Hopi Indian Relocation sets forth a plan which would conclude relocation in 9 years at an additional cost of $194 million.

To put all this in a little perspective, 21 years after the act was passed, the Congress has appropriated $317 million, or about 900 percent more than the original cost estimate. Nine years after the deadline for determining the eligibility of families for relocation we still don't know the number of families who will ultimately be found eligible for assistance. The number of families who have already been served exceeds the original estimate by over 400 percent.

Everyone in this room, today needs to understand that this situation is not likely to continue. This Congress is not likely to provide funding for this program with all of the uncertainties which continue to plague it. There is not an indefinite amount of time to complete implementation of the act. If we can succeed in getting S.

349 enacted, it is far from certain that we will be able to extend the authorization 2 years from now. This is a serious situation which compels the attention of all of the affected parties.

I am interested in hearing from our witnesses today on how we can resolve the remaining uncertainties and complete the relocation housing program at the earliest possible date. I am absolutely sure that whatever happens in the coming months, the status quo which has existed for the past several years will no longer exist. The appropriations issue will force change in this program. I hope that by working together we can agree on the best way to proceed to provide the housing benefits and conclude the program.

[Text of S. 349 follows:]

II

104TH CONGRESS
1ST SESSION

S. 349

To reauthorize appropriations for the Navajo-Hopi Relocation Housing Program.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 2 (legislative day, JANUARY 30), 1995

Mr. MCCAIN (for himself and Mr. KYL) introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

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A BILL

To reauthorize appropriations for the Navajo-Hopi Relocation Housing Program.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. REAUTHORIZATION OF APPROPRIATIONS FOR THE NAVAJO-HOPI RELOCATION HOUSING PROGRAM.

Section 25(a)(8) of Public Law 93–531 (25 U.S.C. 640d–24(a)(8)) is amended by striking "1989," and all that follows through "and 1995." and inserting "1995, 1996, and 1997.".

○

The CHAIRMAN. I note the presence of my friend and colleague from the State of Utah, Senator Hatch, the chairman of the Judiciary Committee, and I wonder if Senator Hatch would have any statement that he would like to make.

Senator HATCH. I don't at this time, Mr. Chairman. I'm just very proud to be on this committee and hope that I can help you and Senator Inouye and others in doing a good job.

The CHAIRMAN. Thank you very much, Mr. Chairman.

Now I would like to recognize Albert Hale, the president of the Navajo Nation, who I see is seated at the table; I would like to invite Ferrell Secakuku, the chairman of the Hopi Tribe, and Chris Bavasi, executive director, Office of Navajo-Hopi Indian Relocation to join him. Mr. Bavasi will be accompanied by Michael McAlister, Paul Tessler, and Eugene Yazzie.

I might add, Senator Hatch, that Mr. Bavasi also serves as the mayor of Flagstaff, AZ in his other avocation. And at a very large salary, I might add. [Laughter.]

President Hale, if it's agreeable, we'd like to begin with you.

STATEMENT OF ALBERT A. HALE, PRESIDENT, NAVAJO NATION, WINDOW ROCK, AZ

Mr. HALE. Thank you, Senator McCain. [Greeting given in Native tongue.] Before I start I would also like to say thank you to a good friend of mine, Eric Eberhard. I'm glad that he's leaving to join us in the private sector—not really, but thank you, Eric, for all your help, particularly to the Navajo Nation.

Mr. Chairman and members of the committee, thank you for giving me this opportunity to testify on the reauthorization of the Office of Navajo and Hopi Indian Relocation and the office's plan to complete the relocation of Navajos and the eventual phasing-out of the program.

The Navajo Nation and the Navajo people subject to relocation are frustrated by the delays and mismanagement of this Federal program. The problems that have been created are homelessness, poverty, land issues, housing issues, and eligibility appeals. Families who were relocated off reservation are left vulnerable to urban opportunists and lost their homes. Many families are homeless. Adult children are homeless because their parents relocated when they were children, some because of misleading counseling by the Relocation Office.

The Navajo Nation cannot build housing fast enough to house the new homeless. There has been virtually no economic development included in the relocation program. In spite of the relocation laws, the destruction of Navajo families' mutual support system and the loss of livestock and economy of the Navajos on Hopi partitioned lands, the office paints a rosy picture of its model development at the new lands, but it is moving our people next to bars. The office has not responded to the nation's request to assist in removing the bars from the area.

The Navajo Nation is under constant pressure to provide public assistance to these needy families. Over 100 families may be housed on land subject to preexisting strip-mining leases. Some of the new lands are apparently part of the 1934 Boundary Act reservations, which were illegally fenced off in the 1940's, recorded as

private land, and acquired by the Federal Government in a land exchange.

These issues must be resolved before the Navajo Nation can take full responsibility for the new lands. The office is liable for the repairs and replacement of defective houses, and in some cases the office is paying twice. The office needs to begin to build safe and sound houses in the first place, as mandated by law.

The Relocation Office must review and change its certification process and eligibility criteria. Hundreds of eligible people cannot receive replacement housing until they are certified eligible. They should not have to wait 10 or 15 years until an erroneous denial is overturned.

The proposals in the plan are not the thorough and generous programs envisioned by Congress, and are therefore unacceptable. For example, the office proposes to be exempt from the Native American Grave Protection and Repatriation Act, the National Historic Preservation Act, and the Archaeological Resources Protection Act. These laws are important to the protection of Native American religion and cultural interests. We cannot accept this Federal agency riding roughshod over our burial sites.

The plan should account for possible changes in light of the ongoing mediation ordered by the Ninth Circuit Court of Appeals to address the Navajo families' religious concerns.

The office proposes incentive replacement housing to extended family members who are currently ineligible. However, the office does not accommodate the hundreds of families who have complied with the law, voluntarily left their homes, and have yet to receive replacement homes.

The office's proposal for expanded authority and funds to establish a Hopi presence on land where they have never lived before, for all intents and purposes, is forced relocation of Navajos. This is aggravated by proposing to build houses for non-relocatee Hopis, while strictly applying the voluntary relocation deadline for Navajos.

Without consultation with the Navajo Nation, the office asks for expanded authority for infrastructure development in Navajo chapters and in the Bennett Freeze area. The expanded authority is to grant homesite leases and for grazing regulation on Navajo partitioned land. The Navajo Nation considers expanded Federal authority over its lands to be infringement on the Nation's sovereignty and on the chapter's ability to control their lands and their future.

The office proposes cash payments. This proposal does not meet the office's obligation under the act to provide decent, safe, and sanitary replacement housing.

The office's proposal for increased impoundment of Navajo livestock is inhumane. The Navajo Nation does, however, have recommendations which we believe will help address these problems.

First, the religious concerns of the families remaining on HPL and the Navajo Nation's concern for tribal religion must be addressed and resolved by the U.S. Government.

Second, the Navajo Nation recommends a time-out period of 1 year. During that time, oversight hearings to assess the impacts of relocation should be held. A comprehensive study should be con-

ducted on the impacts of relocation on those families who have relocated, have been displaced, or have been made homeless, while continuing to build houses for certified families and to process appeals.

The Relocation Office should be reorganized and streamlined during this time. During the time-out, Congress must require an honest assessment of the problems and liabilities of the present program. The Relocation Office has an institutional interest in concealing its mistakes, covering up problems, and extending its mandate into the indefinite future.

Fourth, the Navajo Nation recommends that the existing nonprofit Navajo Redevelopment Corporation or the Navajo Nation be funded to assume responsibility for providing community infrastructure and rehabilitation in the relocation impacted areas, and to foster the economic development needed to address the widespread poverty that has resulted from the relocation and the land dispute.

The Navajo Nation recommends a plan similar to the model used in the Navajo Rehabilitation Act of 1950, enclosing instead of expanding the authority of the Relocation Office as suggested. The office must be restructured to focus upon and remedy its continuous mishandling of eligibility determinations, defective housing, and social problems. The office must be reminded—both the Commissioner and the staff—that Congress intended the law to be implemented in a thorough and generous manner. Instead of granting more powers to this temporary Federal agency to act as a governing authority over our lands, the office should be directed to concentrate its efforts on the people whose lives the law has destroyed.

Thank you, Senator McCain and members of the committee.

[Prepared statement of Mr. Hale appears in appendix.]

The CHAIRMAN. Thank you very much, Mr. President.

Now could we hear from Chairman Ferrell Secakuku.

STATEMENT OF FERRELL SECAKUKU, CHAIRMAN, HOPI TRIBE, KYKOTSMOVI, AZ

Mr. SECAKUKU. Thank you very much, Chairman McCain and Senator Hatch. I am glad to be here. Thank you for this opportunity to give you my words on the reauthorization of the relocation.

Greetings from the Hopi Land. With that, I would like to say [remarks in Native tongue]. Together we shall succeed in this. This is a very, very sensitive issue. I don't have a long speech, but I would like to bring some concerns from the Hopi Nation to you.

First, the Hopi people support the continued authorization of the Navajo-Hopi Relocation Program for another 3 years. Therefore, we would like to put a limitation on that. We want to put a condition on it by saying that it should end by 1998. With that, we would like to begin downsizing within 2½ years, getting ready for it to close down by 1998.

The completion of the Relocation Program is long overdue. Today, 20 years after its inception, the Hopi Tribe still hasn't had jurisdiction over their lands. We are still being treated like second-class citizens within our own lands. We ask the United States, the Federal Government, to end this relocation as quickly as possible.

Second, I would like to just briefly apprise you of some of the things we have been doing for the past 4 years, aside from the relocation—which is very important, also—to the relocation process. Because of the *Manybeads* case, we have entered into a process which we call the Land Settlement Program, with the families, and we have worked very hard on that for the last 4 years. Unfortunately, 2 years ago, as you will recall—or as you know—the details of the Agreement in Principle that we had worked up together as a group became prematurely public, and there was a large backlash of political nonsupport. As a result, both the United States and the Navajo Nation backed off. Further, the result was that the Navajo families did not ratify the Agreement in Principle when it was due in 1993.

Soon after that, Judge McCue, who was then the appointed mediator of the Ninth Circuit Court, came back to the Hopi Tribal Council with a request to the resolution by saying that we will address this issue, and has convinced the Hopi Tribal Council to give Navajo families another chance. With that, we have been working very hard, diligently, for over 1 year, almost 2 years now, trying to settle this land case with the Navajo families.

If we are successful in this alternative settlement, we would ask you to consider it very carefully because we believe that what we are doing will save the U.S. Government a lot of money. We will assure you that we will not expend any more funds that the taxpayers have endured for over 20 years.

You have the information already on the numbers, which I don't think I need to repeat. That's pretty accurate information that you have just read. But before you today is a question of whether to authorize an additional $90 million, to be spent over the next 3 years. But for the purpose of comparison, the Commission relocated 408 families during the last 3 years. Assuming that none of the 218 pending appeals are granted, there will be over 300 families left to relocate at the end of the next 3 years if relocation continues at this rate.

Unless there is a process by which we can quicken the initiative, the taxpayers will have to pay another $165 million over the next 5½ years for this process. This works out to the expenditure of over $220,000 per family. This raises a very serious question among many people, including the Hopi, whether there is a better and a cheaper way of doing this to complete the program; or if you are unwilling to carryout the program.

We believe that the Agreement in Principle that was carefully developed by the four parties, including the Federal Government, 2 years ago is the best way—the best method—to handle this situation. It addresses some of the very, very tough questions that Congress is unwilling to take care of, and it is our hope that if we are able to bring it before you, you will agree with us.

But we need to put some timelines on all these efforts. So my final point would be on the timing and the status of the Relocation Commission. Both the Relocation Program and the settlement process would benefit from the establishment of a deadline, because at present neither the Commission nor certain parties to the Agreement in Principle are moving as quickly as possible.

There is no reason why the Commission needs 5½ years to complete their program. It should only take 2½ years to 3 years to complete the program. Nor is there a reason for certain parties to this settlement process to drag their feet in arriving at a settlement. We need to all work together diligently on this to come to some agreement so that both the Navajo and the Hopi people will live satisfactorily and peacefully and harmoniously throughout their lives.

We suggest, then, that rather than allowing the Commission to continue as it has in the past, we recommend that the best way to use the taxpayers' money to get this job done is to authorize the executive staff, which both the Navajo Tribe and the Hopi Tribe would recommend to Congress for hiring, and that we will be at their side to initiate the Relocation Program in a timely manner.

From here on, the Relocation Program should be an involuntary program, the way the law mandates. We further request that you condition your authorization on certain results and timelines which, even if it does not galvanize the parties of the Agreement in Principle into action, would ensure that 746 families are relocated more quickly than to drag it out for 5½ years, and at a cost that is significantly less than $165 million. This is our recommendation to the committee.

Again, thank you for this time and for permitting me to say a few words from the Hopi Tribe. Thank you very much.

[Resolution H–129–92 of the Hopi Tribal Council appears in appendix.]

[Prepared statement of Mr. Secakuku appears in appendix.]

The CHAIRMAN. Thank you, Mr. Chairman.

Mr. Bavasi, welcome.

STATEMENT OF CHRISTOPHER BAVASI, EXECUTIVE DIRECTOR, OFFICE OF NAVAJO-HOPI RELOCATION, FLAGSTAFF, AZ ACCOMPANIED BY: MICHAEL J. McALISTER, DEPUTY DIRECTOR; PAUL TESSLER, COUNSEL; AND EUGENE YAZZIE, COUNSELING SUPERVISOR

Mr. BAVASI. Thank you, Senator McCain, Senator Hatch. Thank you for allowing us to testify today in support of the reauthorization for the housing portion of our program.

Before I start, please allow me also to congratulate Eric and thank him on a job well done. We appreciate it very, very much, and good luck to you in your future endeavors.

I have a statement and I will present it for the record, but if I might I'd like to just comment on it briefly.

The CHAIRMAN. Without objection, your full statement will be made part of the record.

Mr. BAVASI. Thank you, sir.

We are here today to discuss the housing portion of the program, but I merely wanted to point out quickly that the program is considerably larger and more complex than that. We deal with initial applications, certifications, appeals, social counseling, inspections and compliance, housing acquisition, housing construction, and post-move services. So the housing, while it is probably the most important part of the program, is only a part of what might be considered a very complex program.

In 1993 the office began a process of critically examining our organization and functions. Although the office was specifically exempt from the Executive order directing a reduction in staffing, we determined that it was in the best interests of good government and responsiveness to our clients to identify areas where we could make savings through reducing expenditures and staffing. Indeed, the office had already begun to reduce staffing through attrition and a self-imposed freeze on hiring. The staffing of the agency had thus been reduced from a high of 97 in 1992 to a total of 90 persons so far in 1995. This represents a 7-percent-plus staff reduction.

From a management perspective, we viewed the National Performance Review initiatives as a positive opportunity to continue to implement those policies and activities begun in 1993, specifically as concerns the intention to downsize. That is precisely what we have done, and it has provided us a specific, systematic means to accomplish an orderly reduction in spending and staffing, while continuing to provide service to our clients and conclude the Relocation Program.

The office has also, as a result of the reinvention process, altered its organizational structure to establish a plan for self-directed work teams in all of the areas of office operation. This restructuring, when fully implemented during the next two to three months, will result in reduction of the number of individuals with supervisory responsibility, which will be in excess of the National Performance Review goals.

Finally, we are currently in the process of conducting our customer satisfaction survey, and should have final results by midsummer of this year.

In late September, 1994, the office began preparation of a relocation completion and agency phase-out plan requested by the House Interior Appropriations Subcommittee. We utilized many of the existing elements of our reinvention process in the plan for relocation completion. New elements have been included in the relocation plan as a result of the House Interior Appropriations Subcommittee's request for a plan to finalize the relocation process and transfer the function of the agency to a successor entity. We have provided copies of this plan to your committee.

The office believes that this plan offers the best potential for the completion of relocation in the event that the mediation effort ordered by the United States Court of Appeals for the Ninth Circuit fails. The plan for relocation completion contains recommendations for incentives which would assist the Hopi Tribe in reestablishing its presence on the HPL; incentives to encourage the remaining Navajos residing on the HPL to voluntarily comply with relocation; and alternative compensation strategies for non-HPL residents for whom an actual physical relocation is not feasible.

I believe the plan, which also includes an update to the historical background of relocation and its statistical elements, presents a clear representation of the many issues involved, illustrates how we reached our conclusions, and demonstrates an orderly means to reduce and eventually eliminate the office. I believe the information in the plan demonstrates a commitment to the continuing aim of reducing the size of Government, but also assures that the Gov-

ernment can retain qualified employees to carry out the remainder of the relocation program.

Senator thank you for this opportunity.

[Prepared statement of Mr. Bavasi appears in appendix.]

The CHAIRMAN. Thank you very much, Mr. Bavasi. We appreciate your testimony and your being here.

President Hale, in your view what steps can be taken by the Office of Relocation in the Navajo Nation to expedite the process of providing the benefits to the 746 families who have been certified as eligible?

Mr. HALE. Senator, as we recommended, we recommended a time-out period in which all of that can be assessed through oversight hearings to determine exactly what type of impact there is on the individuals who have yet to be relocated, and what the best alternative is. We can bring that to light during oversight hearings, and also during that time-out period we can reorganize the office so that it can be structured to carryout that purpose. That's what we would recommend.

The CHAIRMAN. Well, thank you.

Mr. President, you wrote a letter to the Honorable Ralph Regula on February 28—he is the Chairman of the House Interior Appropriations Committee—and in your letter you said,

> Therefore the Navajo Nation requests that the House Interior Appropriations Subcommittee place a hold on appropriating fiscal year 1996 funding for the Office of Navajo and Hopi Indian Relocation. I will be in Washington on March 13 and would like to meet with you to propose alternatives to this currently costly and ineffective program. I believe we can reduce the cost to the Federal Government while at the same time addressing the liabilities which would otherwise be passed on to the Navajo Nation. If the subcommittee agrees with my proposal, my staff will work with your staff to develop a program for winding down relocation.

Could you share with this committee your proposal?

Mr. HALE. The proposal that we are referring to is the recommendations that we have put forth before this committee this afternoon.

The CHAIRMAN. Could you repeat those, please?

Mr. HALE. Those are the recommendations that I've alluded to. One of them is to have a time-out period, which I just addressed, and also in that process of the time-out period, to have oversight hearings to identify a lot of the problems that are being faced by people who are still on Navajo Partitioned Land, people who have been relocated but have lost their homes and therefore have become homeless, and all the people who have been declared to be ineligible and are still awaiting benefits. That's basically the crux of our proposal, which is to do oversight hearings and identify those problems, identify the course of action that can be taken that will save the taxpayers some money.

The CHAIRMAN. This time-out period, what length of time would you envision that this time-out period would encompass so that hearings could be held and assessments could be made?

Mr. HALE. We are recommending a 1-year time-out period. During that time we request the reorganization of the Relocation Office to carryout the responsibilities more efficiently and to address a lot of the allegations of mismanagement and inability to address the needs of the relocatees.

The CHAIRMAN. How long would you seek to place a hold on the appropriations for fiscal year 1996?

Mr. HALE. About the same amount of time, a 1-year period.

The CHAIRMAN. So if I understand you correctly, if there is a 1-year period of time-out and a 1-year suspension of appropriations, the entire process then necessarily would come to a halt?

Mr. HALE. Yes; it would. And I think that will give us time to analyze the problems that have arisen from the relocation effort up to this point, and the office's past history, its lack of compliance or the lack of its ability to carryout the mandates of the Relocation Act.

The CHAIRMAN. President Hale, Judge McCue, and other Federal officials estimate the number of Navajo families on the HPL to be between 50 and 150. The Navajo Nation has estimated that 250 families remain. Can you give us some idea as to why there is that significant disparity in those numbers, between the estimates of Judge McCue and the Federal officials and the Navajo Nation's estimate?

Mr. HALE. The act has necessitated the establishment of an office within the Navajo Nation. We have expended a tremendous amount of money to help carryout that mandate that has been part of the relocation law, and that's the Navajo-Hopi Land Commission that is authorized by the Navajo Nation Council.

The staff there and the Commission have the responsibility to actually go out and visit these homes. All the information that you have there on the 250 families is information that has been brought about by people actually going out there. I can't begin to give you an idea of how Judge McCue came about those numbers, but this is the way the numbers that we have were acquired. Of course, the 250 number is a number that is relative to what is considered to be permanent residents. There is probably an equal number of what we refer to as just being away from the community for educational purposes or employment purposes. So our number is in excess of 500 families.

The CHAIRMAN. Thank you very much.

Mr. Chairman, of the 746 families which have been certified as eligible for relocation but which have not yet received benefits, do you know how many of those are Hopi?

Mr. SECAKUKU. A little over 100 are Hopis, which have already received their benefits. None of the ones which were mentioned here are Hopis. The Hopis have received their benefits already and they have moved.

The CHAIRMAN. Do you have an estimate of the Navajo families remaining on the HPL?

Mr. SECAKUKU. Excuse me. I was just corrected. There are six Hopi members who have not received their benefits.

The CHAIRMAN. I see.

Mr. SECAKUKU. What was the question? I'm sorry.

The CHAIRMAN. No problem.

Of the 218 active appeals from denials of eligibility, do you know how many of those are Hopi?

Mr. SECAKUKU. None.

The CHAIRMAN. Do you have an estimate of the number of Navajo families that are remaining on HPL, your estimate?

Mr. SECAKUKU. Approximately 101 families.

The CHAIRMAN. Mr. Bavasi, can you walk us through each step in the relocation process and give us an estimate of its average cost and the average amount of time required for completion, starting with an application for benefits and ending with the completion of post-move counseling?

Mr. BAVASI. I will do my best, Mr. Chairman.

The process starts with an application, of course. At this point in time we are no longer accepting applications, but there will no doubt be a period of time when we will be discussing possible eligibility with people we would refer to as nonapplicants, people who did not apply in a timely fashion.

Once our clients go through the application process and are certified—and let me jump off there momentarily, because there were some, as you know, that were not certified, and many of those then would go through an appeals process, so that would be another processing loop that we have. You mentioned that earlier, that there are 200-plus people currently in the appeals process. But presuming that they have been certified, they then go into our counseling program. At that point there is an interview with the family, decisions on relocation site, development of relocation plan, resolution of problem issues, and other things that might come under the heading of counseling.

Once they get through the counseling process, they then go into inspections and compliance where we review the relocation site, whether it is an on-reservation homesite lease, or off-reservation site. Site feasibility studies are done, historic properties assessment, infrastructure completion—if we have to do infrastructure in terms of development—and then any other studies that need to be done.

The client is then put into housing acquisition. There are decisions made about new construction or resale homes. All of this is up to the client. We do not tell the client where to go. We do not tell them what contractor to use. We do not tell them the type of house they must have. There are certain parameters that we deal with; if a person is not suited to be an off-reservation relocatee, meaning they do not have a job, or perhaps they are not educated, we will only move them on-reservation. Then we run into the homesite lease process, which can be very lengthy. I'm trying to go through it step by step, but sometimes you have to take a step back. For instance, if they are going to stay on-reservation—which most of our clients now do—the homesite lease process can be a very lengthy process. We actually pay to have staff work in the Navajo leasing offices, and we are able to get leases through as quickly as 1 year to 2 years. But if that were not the case, if we did not have our own staff working there, sometimes it takes as long as 6 and 7 years to get a homesite lease. But in our case, we are able to do it, with the assistance and cooperation of the tribe, frequently in less than 2 years.

The CHAIRMAN. That's good?

Mr. BAVASI. That is very good in terms of the timeframe, although I would defer to the President to back me up on that. But it is quite good.

Once it is determined whether they will live on-reservation or off-reservation, and they are into the housing acquisition program, then the clients are allowed to pick a contractor. We do not force any contractors on them, but when they pick a contractor, we certainly check out the contractor and make sure they are licensed and bonded. A site is selected, and we then—it is a three-way contract among the client, the contractor, and ourselves, and we start to build the home.

Now, there is a seven-step inspection process as the home goes up. The reason I comment on that is that there seems to be some doubt about the quality of housing. For instance, in the city of Flagstaff we have an inspections program that is adequate, but not to the extent that we have in the Relocation Program. Our specifications for homebuilding exceed the national standards, exceed all of the local standards, because of this concern for quality housing. We have a two-year warranty program after the home is constructed, and then beyond that we have a repair program. The specific reason for the repair program is that we did not anticipate being in business as long as we have been, and people need a place to turn to for legitimate repairs of latent defects in homes. We are prepared to do that, and do do that.

Once the house is constructed, then there is a 2-year post-move program which not only includes the warranty on the home, but also provides counseling services for the clients. One of the programs that President Hale mentioned that the tribe has developed for our clients, we substantially fund to make certain that our clients do not lose their homes once they get into them. So we fund the program that the President mentioned to allow them to assist clients when they get into trouble with the cost of utilities, taxes, and those types of things that traditionally any person might lose their home for.

There are very few, if any, cases in the recent past that we are aware of where people actually have lost their homes because of the relocation process. I will get this for you for the record, but we can't give you precisely the numbers per individual element of the program, although Mike made a note to me that archaeology costs are about $10,000 per house, per family.

The CHAIRMAN. You don't have an estimate of the total average cost per relocatee or family?

Mr. BAVASI. The housing costs per relocatee are in the neighborhood of $100,000 for the housing costs.

The CHAIRMAN. And would that be the entire cost to the Commission?

Mr. BAVASI. No; then we add the archaeology costs. We add the counseling costs, the administrative costs.

The CHAIRMAN. What would be the counseling costs?

Mr. BAVASI. Senator——

The CHAIRMAN. Rough it.

Mr. BAVASI. It would be $25,000 total administrative costs per relocation. We apologize.

The CHAIRMAN. So we're getting into the range of close to $200,000?

Mr. BAVASI. We would think that would be high for the total costs per house, but again——

The CHAIRMAN. Maybe you could submit for the record both the costs per relocatee, and perhaps you could—either for the record or now—give an estimate about how long it takes for this process, from beginning to end.

Mr. BAVASI. The total direct and support costs per relocatee are approximately $125,000. Assuming full cooperation from the client an individual can be processed in less than 3 months for a resale home, 6 months for new construction off reservation and 18–24 months on reservation.

You would like me to give an answer now on how long it takes, beginning to end?

The CHAIRMAN. If you have it. If not, submit it for the record.

Mr. BAVASI. There was a point raised which I had neglected to mention. Considering full cooperation on the part of the client, 2 to 2½ years.

The reason I'm hesitating is that we get them into the process immediately. Getting them in is not the problem. Getting them out the back end—many people came forward and said, "We want to be part of this; we want to be certified." We certified them, and then there was some reluctance, for a variety of reasons, to get through the process. But if they are active and go through the process, we can get them through in 2 to 2½ years.

The CHAIRMAN. When will the process for appeals from denials of eligibility be complete?

Mr. BAVASI. Presuming that it's the 200-plus remaining, 2 to 3 years, and that doesn't include potential Federal Court appeals.

The CHAIRMAN. In the decisions that are rendered for appeals from denial, what has been about the average of sustaining those appeals?

Mr. BAVASI. We're looking for 50 percent.

The CHAIRMAN. Is that what the record has been?

Mr. BAVASI. Yes; and many of those we have overturned ourselves, in-house. Not all of those—we've had about 25 go to court. The Federal Court appeals have been about 40 percent favorable.

The CHAIRMAN. Well, I want to thank the witnesses. I want to just make a couple of additional points.

One is, I don't think that the Congress is prepared to revisit the legislation and bring out new legislation. I don't believe that the Congress is ready to agree to forced relocation. I don't believe that the Congress' patience is unlimited, as I mentioned in my earlier statement.

The anticipation of the difficulty of this issue was clearly, terribly underestimated in 1974 when the act became law. I have always believed that the ultimate answer to this land dispute was an agreement between the two tribes, epitomized by the tribal leaders and ratified by the tribal councils. I am very appreciative of the efforts of Judge McCue. I am very appreciative of the efforts of Congressman Morris Udall who, on several occasions in the early 1980's, sat down with the elected tribal leaders and attempted to work out a resolution of this problem.

I also don't believe it is appropriate for me or any other Member of Congress to tell the tribes what they should do, because the elected leaders of the tribes are elected leaders of sovereign states, sovereign nations. At the same time, I have to tell everyone who

is interested in this issue that times have changed. There is change taking place in America, and that change mandates us not to spend an unending amount of money on an issue that needs to be resolved. Most objective observers would believe that 21 years is long enough.

Perhaps it's not long enough. Perhaps the gross misestimates are that there's another 21 years required. I don't happen to think so, and I don't think that the majority of the Members of Congress do.

I'm also aware that the tribes have the recourse of going to the Federal court system, as they have done many, many times in the past over certain aspects of this law. This has probably been one of the most litigated acts of Congress in the history of all acts of Congress.

So I would hope that we could reach a resolution to this problem. I believe that if there was a definite end point within reason that this issue could be resolved, that Congress would fully support whatever funding was necessary, because clearly there are obligations that the Congress has. But that obligation is not open-ended and unlimited.

I know that some people are going to be very unhappy to hear what I have to say, but it is my obligation as the elected representative in the U.S. Senate of both the Hopi Tribe and the Navajo Tribe, as well as the other 4 million citizens of the State of Arizona, to tell you what I think the political reality is. It would be very unfair of me to tell you anything but what I believe is going on in the freely-elected Government of the United States as represented in the Congress of the United States.

So it is my profound and deep hope and prayer that there can be some resolution to this problem without a cutoff of funds, which would then require recourse to the Federal courts, which would then require the courts to mandate the Congress to take certain action; and meanwhile, people suffer unspeakable tragedy and depravation as a result of this tragic situation that exists between the two tribes.

So I do not propose any solution. I do not mandate any solution. I do not even recommend any solution. What I do recommend is that we all renew our efforts to try to bring an end to this terrible 21-year—actually, 112-year—tragedy that has been taking place, only to the detriment of people who have never seen Washington, DC and certainly have had no input into the process.

So I would like to end the tragedy. I know that all of us want to end this ongoing tragedy, and I hope that we will all work together to try to reach some equitable solution that is fair to all concerned.

I want to thank the witnesses again. I want to thank them for their leadership of the two tribes. I want to thank Chris Bavasi for his dedicated effort for many years on this very difficult issue, and I again want to make the commitment to you that I want to do anything that is within my power to help you resolve this issue, and I will stand by at any time, day or night, to do so.

I thank you very much. This hearing is adjourned.

[Whereupon, at 3:25 p.m., the committee was adjourned, to reconvene at the call of the Chair.]

APPENDIX

Additional Material Submitted for the Record

Prepared Statement of Albert Hale, President of the Navajo Nation

Mr. Chairman and members of the Committee, I thank you for this opportunity to testify on the important matter of the reauthorization of the Office of Navajo and Hopi Indian Relocation and its plan to complete the relocation of Navajos and the phasing out of the program.

In 1882, the Federal government established a reservation with arbitrary boundary lines for the Hopi people "and such other Indians" as the Secretary of the Interior settled thereon, principally to give the local federal Indian agent authority to expel missionaries. At that time, there were already approximately 600 Navajos living in the area. In 1962, a federal court held that the descendants of those Navajos and other Navajos, settled by the Department of the Interior in the area, were included in the phrase "such other Indians" and were fully entitled to live within the 1882 Reservation, and that the area was under the joint authority of the Navajo Nation and Hopi Tribe. Not satisfied with this result, the Hopi Tribe, encouraged by energy companies interested in a final definitive determination of title to the land, convinced Congress to divide the disputed land, the Joint Use Area, in half. The 1974 Navajo-Hopi Land Settlement Act, P.L. 93-531, required that anyone found living on the other Tribe's land after the division would have to move—and so began the single greatest relocation of an ethnic group since the internment of Japanese Americans during World War II. In the beginning, the federal government anticipated it would cost $40 million to relocate 1,000 Navajo families and approximately 100 Hopis. To date, this cost has risen to $335 million, 2500 heads of household have been relocated, and 750 heads of household have been certified for benefits but have yet to be relocated.

The Fiscal Year 1995 House Interior Appropriation Committee Conference Report expressed concern about the length of time it is taking to complete relocation, and the large number of appeals that are adding to the number of families to be relocated. The Committee asked for a report from the Relocation Office and a plan for the transition of responsibilities to a successor agency and that the office be phased out by the year 2000. The Relocation Office plan was developed without any consultation with the Navajo Nation or the Navajo families most affected by relocation. The Navajo Nation has reviewed the proposed plan and has specific concerns regarding many of its provisions. Additionally, I will provide specific suggestions on how the plan could be changed to better serve the needs of the affected Navajo families.

While it is appropriate to envision an end to the relocation of Navajo families from their homes, we cannot allow this page of history to be so quickly turned and forgotten without taking a closer look at the consequences of relocation. There are many questions that need to be asked and answered. We need to look at why the Office's eligibility determinations are being challenged and reversed at a rate of more than 80 percent on appeal when objective review occurs in federal court. We need to look at and address in constructive ways not only the monetary costs of relocation, but the human costs as well. These costs-include government regulation of the right to

practice Navajo religion, homelessness, loss of land and livestock, poverty, lack of employment, the breakup of families, unsafe or unhealthy housing conditions, and the delays or denial of public and utility services.

We believe that between 19,000 and 21,000 Navajo people have either been relocated or are certified for relocation assistance benefits, applied and were denied benefits or are bona-fide residents of the Hopi Partitioned Lands who never applied for relocation assistance. More than 12,000 Navajo people suffered through the 27-year "Bennett Freeze" in the western Navajo Reservation. We also estimate there are between 1,000 and 1,500 Navajo people who were evicted from District Six in the years between 1936 and 1972 who were not compensated for the loss of their homeland. What has been the effect of relocation on the lives of the hundreds of families who were relocated? How are the people who were relocated faring now? How many relocatees still live in their replacement homes? Where are and what happened to those families who are no longer living in their replacement homes?

Recently, the Navajo Nation Intergovernmental Relations Committee of the Navajo Nation Council conducted 11 days of hearings across the Navajo Nation. The sworn testimony received showed overwhelmingly devastating negative impacts which are directly the result of relocation. Congress should hear for itself whether or not the relocation program has been "thorough and generous."

On a broader scale, it is now absolutely necessary for the Committee to begin reviewing the entire relocation policy and its effect on Navajo families, the Navajo Nation, the Hopi Tribe, and the United States. When the Act was passed more than twenty years ago, many anticipated the Act would be a "settlement." Yet, twenty years later, we are still entangled in many, if not more, quagmires relating to the Hopi-United States-Navajo land dispute. The 1974 Act has exacerbated the number of lawsuits filed by the Hopi Tribe against the Navajo Nation. Both tribes have been hobbled by the time, energy, and cost of litigation. The United States itself is spending untold amounts on these matters. Although attorney fees were authorized in the statute, appropriations for such costs have not been forthcoming. Instead of addressing the vital concerns of education, health, economic and community development, the Navajo Nation has been forced to devote much of our limited time, energy, and resources to the Hopi-United States-Navajo land dispute. How much longer must we expend our limited resources? How much more misery must our people suffer before we see any relief? We believe that it is now time for Congress to re-visit and re-evaluate the relocation process that is called for in the 1974 Act to determine whether it is working as intended and to assess the human suffering endured by thousands of Navajo families.

When Congress created the Office of Navajo and Hopi Indian Relocation its mandate was to provide a relocation program that is "thorough and generous." Yet, for the Navajo relocatees, the relocation program has been anything but thorough and generous. Because of the Office's mishandling of its mandate under the relocation law, the Navajo Nation has had to create and fund two programs—the Navajo-Hopi Land Commission Office and the Navajo-Hopi Legal Services Program—which spend all of their time and resources insuring that the Federal Relocation Office fulfills its obligations in accordance with the 1974 Settlement Act with regard to eligibility determinations and carrying out the relocation of families. For many years, the Office rode roughshod over the lives of the "voluntary relocatees." Traditional people who spoke no English, were relocated to border towns and forgotten. These self-sufficient people, who once provided for their families with their herds of livestock, are now in an alien environment with no means of support. They are vulnerable to questionable loans and real estate practices. Many lost their homes. Hastily constructed replacement houses, built by fly-by-night contractors, interested only in making a quick profit on federal contracts, fell apart.

Additionally the Office denied thousands of applications for relocation assistance when Navajos were unable to prove that they had met the complicated eligibility requirements, and then subjected these Navajos to an adversarial process to prove their eligibility. The Office continues to maintain strict and unfair procedural requirements that act as barriers for unwary applicants and allows the Office to deny assistance, even to clients who are obviously eligible. For example, more than 1,300 Navajos denied assistance were unable to meet appeal deadlines due to the highly complicated and technical language contained in letters sent out by the Office. A court later ordered the Office to reopen 800 of these cases. Another 544 may never have the chance to even enter the Office's adversarial process to prove their eligibility. These ridiculously unnecessary processes have caused hundreds of Navajo families to wait up to fifteen years in order to receive the relocation assistance benefits to which they are entitled. Hundreds of Navajo families are still waiting. Hundreds more missed the Office's July 7, 1986 application deadline. In some cases, the Office lost applications for assistance. In others, adult children of certified relocatees

reasonably believed that their applications were being processed with their parents, later learned that because they did not fill out one federal form they would not be provided with the replacement housing for which they are clearly eligible.

In true bureaucratic fashion, the Office blames the Navajo clients for holding up the relocation process, thereby failing to take responsibility for its practices. The Office and its practices, some of which have been proven to be denials of due process, are the reasons that the relocation program has taken so long to complete.

The Navajo-Hopi Legal Services Program collected $108,000 in attorney fees on eligibility appeals in one year alone. Attorney fees are awarded when it is determined that a federal agency was not substantially justified in defending a case. Once again, the increasing costs of the relocation program are attributable to the actions of the Relocation Office itself, not the Navajo clients.

The Office has now submitted its plan for the termination of the Relocation program. Despite its 215 pages, it is obvious that the plan was hastily drafted with few, although necessary, details and little thought to the consequences of such termination. For example, the plan makes no provisions for protection of replacement houses. According to the office's own figures, 49 percent of the relocations have been to the Navajo Nation where relocatees pay exorbitant premiums for homeowner's insurance because of the lack of fire protection. Many families cannot afford the nearly $1,000 annual premiums and let their houses go uninsured. Instead of recognizing this very real problem, proposals to build fire stations in the communities that host relocatees go unaddressed and instead, the Office has funded rodeo grounds at the New Lands.

Comments on Section 2-4 "Program Changes and Incentives"

The Office proposes to grant "incentive" replacement houses to extended family members who are currently ineligible for those benefits. While the Navajo Nation believes this is a step in the right direction and more in line with the "thorough and generous" relocation program Congress envisioned, the Navajo Nation is concerned with the broad discretion requested by the Office. Equally disturbing is the fact that the hundreds of eligible Navajos families who have already voluntarily relocated have yet to receive replacement homes.

The Navajo Nation believes discretionary homesite leases and grazing permits on the New Lands should be available to extended family members, but only when relocatees from Hopi Partitioned Land and those relocatees who have already left Hopi Partitioned Land are assured their needs will be met.

The Navajo Nation has grave concerns about the bulk of the Office's plan but I want to discuss, in detail, the most problematic aspects: The Navajo Nation adamantly opposes forced relocation and is shocked that the Office would suggest such action. Not only has this Committee conditioned its annual appropriation to the Office on the understanding that there would be no forced relocation, but the Hopi Partitioned Land families and the Hopi Tribe are still engaged in sensitive negotiations that we hope will finally address the religious concerns of the families and their reasonable suggestions for solutions. A policy of a date certain for forcible eviction at this critical time will certainly disrupt these negotiations.

The Office's plan to "re-establish" the Hopi presence on the Hopi Partitioned Land is a sad example of revisionist history. There has been no Hopi residents on the Hopi Partitioned Land in memory or history. The plan to establish a Hopi presence on the Hopi Partitioned Land where there was none before is simply a thinly veiled plan to intimidate the Navajo residents on Hopi Partitioned Land who remain on the land because of their deep religious beliefs. The plan readily admits that the Hopi are not using the Hopi Partitioned Lands "totally cleared of any Navajo residents." The Office proposes that it receive expanded authority to "develop" the Hopi Partitioned Land for the Hopis, with only vague references to what such development would entail. The Office wants to provide range management and improvement, infrastructure development and Hopi residences and ranching activities on the Hopi Partitioned Land. The Office appears to be planning to build these residences on the Hopi Partitioned Land for Hopis who have not been certified eligible for relocation benefits. The plan suggests that many Hopi families would have been eligible for relocation benefits but for the fact that they may have left the Hopi Partitioned Land before the date the Relocation Act was passed. Only those Hopis who lived on the land partitioned to the Navajos in 1974 would have been required to relocate and therefore would be eligible for relocation benefits. While hundreds of eligible Navajo relocatees are being denied their replacement homes for procedural reasons, no Navajos have ever had the benefit of such an expansive reading of the Settlement Act. The Navajo Nation strenuously objects to this assertion.

The plan implies that there is a lack of grazing enforcement on the Hopi Partitioned Lands. Nothing could be further from the truth. Navajo residents of the Hopi

Partitioned Lands are continually monitored and harassed by the Bureau of Indian Affairs and Hop officials for their grazing activities. Livestock is regularly impounded and Navajos are charged exorbitant fees to retrieve their livestock from the impoundment corral. Further stepping-up of livestock impoundment on the Hopi Partitioned Lands would constitute a scorched-earth policy of intimidation of Navajo families on Hopi Partitioned Land not seen since the days of Kit Carson and the first Long Walk.

The Office asks for "expanded authority" for infrastructure development in border chapters and in the Bennett Freeze area. Both of these areas are on the Navajo reservation under Navajo Nation jurisdiction. The Nation has no desire to extend the authority of another federal agency to Navajo land when the Bureau of Indian Affairs is already a pervasive federal presence. Such expanded authority would infringe on Navajo sovereignty and override our ability to control land use and our future.

The Office proposes that it be exempted from the Native American Grave Protection and Repatriation Act, the National Historic Preservation Act, and the Archaeological Resources Protection Act. These laws are important protections of Native American religious interests, Any exemption must be closely examined in light of the on-going mediation ordered by the Ninth Circuit Court of Appeals and the failure of the Hopi Tribe and the United States to address the Navajo families religious concerns.

The Nation opposes the Office's plan to give cash payments to relocatees who at the end of the program are still unable to find a site on which to have their replacement house built. This provision is a throw-back to the early days of the relocation program when the Office simply gave relocatees a sum of money to buy a trailer house and closed their cases. It would leave the most vulnerable relocatees—those who cannot secure a homesite lease and are unwilling to move to the distant New Lands—homeless. Cash payments in no way meet the Office's obligation under the Act to provide decent, safe and sanitary replacement housing.

On another related issue, the Office has been operating for almost a year now without a Commissioner, since the last Commissioner resigned in April of 1994. With so many issues relating to relocation coming to the forefront and needing immediate attention, a Commissioner who is sensitive to the plight of all the people affected by the relocation law should be immediately appointed. I am well aware of the Congress' efforts to downsize the federal government—I am in the process of doing the same with the Navajo Nation's central government—but at stake here is an unfulfilled obligation to the lives and futures of traditional religious Navajo families whose lives have been devastated. The care that must be taken to ensure that such obligations are met is absent from the Office's plan.

Again, thank you for this opportunity to testify. We look forward to working closely with you on these important issues.

PREPARED STATEMENT OF FERRELL SECAKUKU, CHAIRMAN, HOPI TRIBE

Good morning. My name is Ferrell Secakuku. I am Chairman of the Hopi Tribal Council. Let me begin by thanking the chairman and the committee for allowing me to testify today. The issue you have before you is an important one. I would like to make three points with regard to it.

First, the Hopi Tribe supports the continued authorization of 25 U.S.C. Section 640d-24 (a) (8) for another three years with a condition that is must end by 1998. The completion of the relocation program is long overdue. Today, twenty years after the passage of the Settlement Act, the Hopi Tribe has tried every possible way to accomplish a settlement and still does not have jurisdiction of its own land. Indeed, Hopi is the only Indian Tribe in the country that is treated like a second class citizen on its own land. It is incumbent upon the federal government to complete the relocation program and to return jurisdiction of our land to the Hopi Tribe. We continue to stand ready to assist you in whatever way we can.

Second, I would like to apprise you of the status of the current settlement process. From the Hopi Tribe's perspective, we have been diligently working on a settlement of the land issue for the last four years. In that we are pursuing Judge McCue's mediation directive on implementation of the Agreement in Principle (AIP). Progress has occurred in some areas, but it is unclear whether the process will be successful. As part of the AIP initiative, we have offered a very generous accommodation to the renaming Navajo Individuals that would allow them to stay on Hopi land. To date several meetings have taken place with the Navajo families to begin open communications and understanding.

Two years ago, when the details of the Agreement in principle prematurely became public, there was a large political backlash. As a result, both the United States and the Navajo Nation backed off of commitments they had made only months before. That was unfortunate because the merits of the settlement never had a chance for a full airing, and the taxpayer never got a chance to balance the alternatives.

In the last two years, we have gone back at the request of the mediator to the drawing board and have attempted to devise another settlement. It remains to be seen, however, whether it will be agreeable to all parties. The Navajo Nation may choose to portray it as controversial, but Hopi Tribe believes it meets all of the concerns expressed two years ago in the hearing on the AIP

If we are successful in reaching this alternative settlement, we would ask that you consider it carefully, especially because we believe it will save the United States money. As I am sure you recall, the Office of the Navajo and Hopi Indian Relocation has been in business for Fifteen years. By its most recent accounting, attached hereto, it has certified 32 families for relocation, relocated 2,518 of those families, and still has 746 families to go, with 218 appeals still to be decided. Of the 746 families that remain, 101 of them are still on the Hopi Reservation. It is estimated that this process to date has cost the taxpayer approximately $400 million.

Before you today is the question whether to authorize an additional $90 million to be spent over the next three years. For purposes of comparison, the Commission relocated 408 families during the last three years. Assuming that none of the 218 pending appeals are granted, there will be over 300 families left to relocate at the end of the next three years if relocation continues at this rate. Unless the process is quickened, the taxpayers will have to pay another $165 million over the next five and a half years for the relocation process. This works out to expenditures of over $220,000 per family This raises serious questions whether there is a better, and cheaper, way to complete this program or are you willing to carry out the program?

We believe that the "Agreement in Principle" under consideration addresses some of these tough issues. It is our hope that if we are able to bring it before you, you will agree.

My final point relates to timing and the status of the Relocation Commission. Both the relocation program and the settlement process would benefit from the establishment of a deadline, because, at present, neither the Commission nor certain parties to the AIP are moving as quickly as possible. There is no reason why the Commission needs five and a half years to complete its work. Nor is there a reason for certain parties to this settlement process to drag their feet in arriving at a settlement. We suggest that rather than allowing the commission to continue as it has in the past, we recommend the best way to use the taxpayer money to get this job done, is to authorize the executive staff to carry out the necessary work with both the Hopi and Navajo Tribes assisting. We further request that you condition your authorization on certain results and time lines, which even if it does not galvanize the parties to the AIP into action, would ensure that the 746 families are relocated more quickly than to drag it in five and one half years and at a cost significantly less than $165 million.

Thank you for your time. I would be happy to answer any questions.

HOPI TRIBAL COUNCIL
RESOLUTION
H-129-92

WHEREAS, the Hopi Tribal Council has the authority to act for the welfare of the Hopi people and to deal with the United States Government and with other Tribes; and

WHEREAS, it is in the best interest of the Hopi Tribe to confirm and exercise total jurisdiction and control over the Hopi Partitioned Lands and the Navajos residing thereon; and

WHEREAS, it is in the best interest of the Hopi Tribe to resolve the issues surrounding relocation and to provide a mechanism for quickly removing Navajos who are not complying with the law; and

WHEREAS, it is in the best interest of the Hopi Tribe to end the litigation of the Owelty, Use, Damage, New Construction, Post-Partition Rental, Claims Court, and Manybeads cases and to resolve those cases in the Hopi Tribe's favor; and

WHEREAS, it is in the best interest of the Hopi Tribe to add to its land base so as to ensure that the Tribe will have adequate resources in the future; and

WHEREAS, it is in the best interest of the Hopi Tribe to increase its financial assets; and

WHEREAS, the Hopi Tribe has appointed a Relocation Task Team to discuss with the Navajo Nation, the Manybeads plaintiffs, and the United States, the possible resolution of issues surrounding relocation and the possible settlement of certain money cases; and

WHEREAS, the Relocation Task Team reached an Agreement in Principle with the Navajo Nation, the Manybeads plaintiffs, and the United States on October 30, 1992, a copy of which is attached hereto; and

HOPI TRIBAL COUNCIL
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WHEREAS, the Agreement in Principle recognizes and affirms the Hopi Tribe's jurisdiction and control over the Hopi Partitioned Lands and jurisdiction over Navajos residing thereon, provides a mechanism for removing Navajos who do not comply with the law, settles several money cases in the Hopi Tribe's favor, provides for the addition of approximately 500,000 acres of land to the Hopi Reservation, and provides for a payment of Fifteen Million Dollars ($15,000,000) to the Hopi Tribe; and

WHEREAS, the attached Agreement in Principle has been presented to the Hopi Communities and discussed at public hearings; and

WHEREAS, the Hopi Tribal Council has considered and discussed the attached Agreement in Principle.

NOW THEREFORE BE IT RESOLVED that the Agreement in Principle, as attached, is ratified by the Hopi Tribal Council.

BE IT FURTHER RESOLVED that the Chairman of the Hopi Tribal Council with the assistance of the Relocation Task Team is authorized to implement the Agreement in Principle, such implementation shall include the drafting of homesite leases, the negotiating of rental, the disposition of the area surrounding the Sipapu, and other necessary and appropriate measures as set forth in the Agreement in Principle.

BE IT FURTHER RESOLVED that the Hopi Tribal Council hereby adopts the attached budget in the amount of Seventy-five Thousand Dollars ($75,000) to pay for travel and related expenses for the Relocation Task Team during Fiscal Year 1993.

BE IT FINALLY RESOLVED that the Tribal Treasurer is hereby authorized to expend said funds in accordance with established policies and procedures.

AGREEMENT IN PRINCIPLE FOR RESOLVING
ISSUES IN CONNECTION WITH THE
NAVAJO-HOPI SETTLEMENT ACT
(Pub. L. 93-531, as amended)

WHEREAS, the Hopi Tribe, the Navajo Nation, and the Manybeads Plaintiffs agree that it is in the best interests of the Hopi Tribe, the Navajo Nation, their respective members, and the Manybeads Plaintiffs, that a final settlement of certain issues remaining in connection with the Navajo - Hopi Land Settlement Act, Pub. L. 93-531, as amended, be reached by negotiation and voluntary agreement among the affected parties; and,

WHEREAS, the United States recognizes that a negotiated settlement is in the best interests of all parties including the United States; and,

WHEREAS, the Hopi Tribe, the Navajo Nation, the Manybeads Plaintiffs, and the United States benefit from such a voluntary settlement, and will fully support such a voluntary settlement;

NOW THEREFORE THE PARTIES AGREE AS FOLLOWS:

I. AUTHORITY AND UNDERTAKING OF THE NEGOTIATORS

A. The Hopi Relocation Task Team ("Hopi Team") is the team appointed by the Hopi Tribal Council to discuss and make recommendations to the Hopi Tribe concerning a resolution of matters outstanding among the Hopi Tribe, the Navajo Nation, their respective members, the Manybeads Plaintiffs, and the United States. No action of the Hopi Team is to be considered final

action of the Hopi Tribe until presented to Hopi villages and ratified by the Hopi Tribal Council. The Hopi Team agrees to present and to provide its full support for this agreement in meetings with the Hopi Tribal Council and the Hopi villages.

B. The Navajo-Hopi Land Commission ("Task Force") is the duly authorized team appointed by the Navajo Nation to discuss and make recommendations to the Navajo Nation concerning a resolution of matters outstanding among the Hopi Tribe, the Navajo Nation, their respective members, the Manybeads Plaintiffs, and the United States. No action of the Task Force is to be considered final action of the Navajo Nation until presented to affected communities and ratified by the Navajo Nation Council. The Task Force agrees to present and to provide its full support for this agreement in meetings with the Navajo Nation Council and the affected communities.

C. The United States' negotiators from the Departments of Justice and the Interior ("Government Negotiators") are the proper representatives of the United States in the matter. No action of the Government Negotiators is to be considered final action of the United States until ratified by the Secretary of the Interior and the Attorney General, or his representative appointed for this purpose. The Government Negotiators agree to present and to provide their full support for this agreement in meetings within the Department of the Interior and the Department of Justice, and other necessary entities within the Executive branch of the United States.

D. Lee Brooke Phillips is the proper representative of the Manybeads Plaintiffs in the matter. No action of Mr. Phillips is to be considered final action of the Manybeads Plaintiffs until ratified by the Manybeads Plaintiffs. Mr. Phillips agrees to present and to provide his full support for this agreement in meetings with the Manybeads Plaintiffs.

E. Judge Harry R. McCue, Magistrate for the United States District Court for the Southern District of the California, has presided over the settlement discussions in this matter pursuant to the orders of the Ninth Circuit Court of Appeals in the cases pending before that Court captioned Manybeads v. United States and Masayesva v. Zah. Judge McCue agrees to assist the parties in explaining this agreement: to the Hopi Tribal Council and to the Hopi villages, if requested by the Hopi Team; to the Navajo Nation Council and the Navajo tribal members, if requested by the Task Force; to the Manybeads plaintiffs, if requested by Mr. Phillips; and to the Department of the Interior and the Department of Justice, and other necessary entities within the Executive and Legislative branches of the United States, if requested by any party hereto.

II. TERMINATION OF AGREEMENT IN PRINCIPLE

The Hopi Team, the Task Force, Mr. Phillips, and the Government Negotiators agree to use their best efforts to conclude and sign a settlement on the issues addressed in this Agreement in Principle on or before October 30, 1992. If no such agreement is reached and signed among the above parties by October 30, 1992, and

ratified by the duly authorized principals of the negotiators by November 20, 1992 (except for the United States which shall have until November 25, 1992 to ratify the Agreement), the agreements identified herein lapse without obligation or liability to any of the parties.

III. ACCOMMODATION OF NAVAJOS ON HOPI-PARTITIONED LAND

A. Eligibility. To any Navajo on List A provided to the Hopi Tribe, a copy of which is attached hereto as Appendix A, and, in addition, (i) those Navajos domiciled on the HPL who are temporarily away for purposes of education, employment, military service or medical need; (ii) those Navajo legal residents on the HPL who are subsequently certified eligible by the Office of Navajo and Hopi Relocation; and (iii) such other individuals, as agreed to by the Navajo and Hopi tribes, the Hopi Tribe, will offer a lease allowing that person and his or her spouse and children to remain on that portion of the HPL covered by their lease. The number of homesites available for lease is 112. Additional homesites may be made available subject to agreement between the Hopi Tribe and homesite applicant.

B. Parties to the Lease. The HPL lease will be signed by the individual lessees, who shall include all adult eligible Navajos as defined in paragraph III.A, the Hopi Tribe, the Navajo Nation, and the United States. Spouses of adult signatories to an HPL lease shall also sign the family's HPL lease; children of adult signatories to an HPL lease shall also sign the family's HPL lease upon attaining majority.

C. Lease Size. The HPL lease will consist of a three (3) acre homesite and up to ten (10) acres of currently used or nearby farmland, consistent with the Hopi Tribe's Comprehensive Land Use Plan ("Plan"). Subsequent changes to the Plan shall not reduce or change to the detriment of the lessee the lease terms unless such change is agreed to between the Hopi Tribe and the affected lessees. The three acre homesite will be expanded on an individual basis to include the residences of all eligible Navajos at that site.

D. Grazing. The Navajo lessees, as a group, shall be provided a minimum of 2,800 SUYL by the Hopi Tribe. The Navajo Nation shall make the allocation of the grazing rights provided by the Hopi. Individual Navajo lessees may apply to the Hopi Tribe for additional grazing privileges prior to the signing of the Implementing Agreement.

E. Construction and Repair. All structures related to residential, farming, grazing or Navajo ceremonial use which are currently on the HPL leaseholds shall remain permitted, as part of each lease. The individual lessees shall be allowed to repair, restore, and enlarge existing structures. The individual lessees shall be permitted, after application, to construct new structures on the lease areas so long as the structures are related to residential, farming, grazing, or Navajo ceremonial use. Applications for new permitted structures will be processed and granted within seven days.

F. Infrastructure. So long as it is in compliance with applicable law and regulation, infrastructure may be constructed by the Hopi Tribe, the Navajo Nation, other appropriate parties including utilities, to serve the HPL including but not limited to roads, electrical lines, water systems, and other infrastructure related to the residential, grazing and farming use of the HPL. Where such infrastructure is constructed, the subject infrastructure shall be made available to all HPL residents in the area on an equitable and non-discriminatory basis. The parties providing such infrastructure shall enter into appropriate agreements including, but not limited to, the sharing of costs.

G. Jurisdiction.

1. Except as otherwise provided in this Agreement and in subparagraphs 2 and 3 below, the HPL leases and the individual lessees will be subject to criminal and civil jurisdiction of the Hopi Tribe.

2. For issues which are entirely Navajo related, e.g., probate, domestic relations, child custody and adoption, tribal benefits and services, etc., Navajo law will apply and Navajo courts shall have sole jurisdiction over such matters. Questions regarding ownership of HPL leases, however, shall be decided consistent with the terms of the HPL leases.

3. The parties agree that a review procedure shall be established for resolving disputes which affect leaseholds and grazing privileges. Details of this provision will be negotiated

between the Navajo Nation, the Manybeads Plaintiffs, and the Hopi Tribe.

4. The Hopi Tribe shall provide due process under Hopi law and to treat Navajo lessees fairly and equitably.

H. Term of Accommodation. The HPL leases shall be for a term of 75 years. Lessees may apply to the Hopi Tribe for additional extension of the lease period.

I. Transfer. The HPL leases shall be transferable for eligible persons, as defined in Section III.A of this Agreement, to other eligible persons or to children subsequently born to an eligible person, provided those children reside on the HPL at the time of transfer. Absence from the leasehold to attend school, work, illness, military service, etc., shall not be considered in determining whether an individual has lived on the HPL leasehold. In the event of a transfer, the transfer would not become effective until the transferee(s) agree to continue to reside on the property in accordance with the terms and conditions of the HPL lease and executed the lease as the new lessee(s) thereunder. The transferee(s) would be entitled to the use and benefit of the lease for the remainder of the lease term. The transfer of a lease shall be according to the terms and conditions of the lease.

J. Termination for Cause. The HPL leases will be terminable for cause. Cause shall include:

(1) Non-use of the HPL leased premises for residential purposes by the lessee or his or her family and/or descendants for a substantial period of time exceeding 2 years.

(2) A lessee's knowingly violation of substantive material terms or conditions of the HPL lease. Such lease termination shall not affect the rights of other lessees who did not participate in the violation from remaining on the HPL leasehold.

(3) Individual HPL lessees may have their lease rights terminated for the lessee's conviction in a court of competent jurisdiction of violation of certain felonies as defined under Federal law or violation of certain Hopi tribal ordinances or laws. A list of the Federal and Hopi laws which constitute offenses which could subject an individual, if convicted, to lease termination will be negotiated by the Hopi Tribe, the Navajo Nation, and the Manybeads Plaintiffs. Such lease termination, however, shall not affect the rights of other HPL lessees residing on the same lease premises.

(4) Failure to pay rent. If the Hopi Tribe commences a proceeding to terminate a lease (pursuant to paragraphs 1 through 4 above), the Hopi Tribe shall provide all affected lessees and the Navajo Nation with written notice and a reasonable opportunity to be heard and to cure the violation.

K. Effect on Relocation Benefits. The passage of 3 years following the acceptance of homesite lease constitutes a waiver of any and all rights the lessee has to relocation benefits under 25 U.S.C. § 640d.

L. Lease Application. Any Navajo meeting the requirements of Section III.A above is entitled to enter into an HPL lease with

the Hopi Tribe within 1 year after Congressional enactment effectuating the Agreement. The lease form to be used will be negotiated by the Hopi Tribe, the Navajo Nation, and the Manybeads Plaintiffs. Within 13 months after the effective date of implementing settlement legislation, the United States shall implement the provisions of 25 Code of Federal Regulations § 700.137 (1992 ed.) on the New Lands for all Navajos residing on the HPL who are eligible for a replacement home from the ONHIR but have not made timely arrangements for a lease on the HPL. Those provisions shall be fully implemented within 3 years of the commencement of this process.

M. Fund for Subsequent Navajo Relocations. Any Navajo whose lease is terminated for cause within 7 years following the acceptance of that lease on the HPL shall be eligible for temporary relocation assistance. Such assistance shall be made available in a timely manner within 30 days by the ONHIR in amounts and according to the presently established ONHIR regulations applicable to temporary relocation assistance and such other funds as are reasonably necessary.

N. Sunset for Relocation Office Activities on the HPL. Within 3 years of the effective date settlement legislation, the ONHIR, with the continued assistance and the cooperation of the Navajo Nation in processing applications for homesite leases on the Navajo Reservation, shall have completed all of the activities with regard to voluntary relocation of Navajos electing to relocate from the Hopi partitioned lands. It is expressly understood among the

parties that nothing in this Settlement Agreement or settlement legislation shall allow the ONHIR to change its priority system in a manner which would provide HPL relocatees' priority over other eligible Navajos living in unsafe housing.

O. Rent. The Navajo Nation and the Hopi Tribe agree to negotiate an appropriate rent.

P. Interim Implementation. Between the signing of this Agreement in Principle and the effective date of implementing legislation, the parties agree to implement this Agreement on an interim basis.

Q. Equal Treatment. Navajo lessees on the HPL shall be subject to the same rules and regulations and provided with the same access to infrastructure and resources as members of the Hopi Tribe residing on the HPL.

R. Section 106 Notice. The United States shall continue to provide the Manybeads Plaintiffs with notice of proposed government fencing and government construction projects on the HPL and to otherwise comply with Section 106 of the NHPA.

IV. DISMISSAL OF CASES

A. The Owelty, Damage, Use, New Construction, Post-Partition Rent, Manybeads, Claims Court cases (by the Hopi Tribe) will be dismissed with prejudice. The parties shall attach to the Implementing Agreement a list of these cases by proper citation and docket number.

B. The Navajo Nation and the Hopi Tribe waive and relinquish with prejudice all claims against the United States they might have as of this date under 25 U.S.C. § 640d.

C. Upon the effective date of implementing legislation, the Navajo Nation and the United States agree to collectively seek remission of any contempt fine which may be imposed against the Navajo Nation in the new construction litigation pending the District Court of Arizona. The Hopi Tribe shall not oppose such application.

V. COMPENSATION TO THE HOPI TRIBE

A. C.O. Bar Ranch

1. The Navajo Tribe shall purchase the C.O. Bar Ranch and transfer all of that ranch west of the ridge line nearest to the Little Colorado River to the Hopi Tribe, except for additional acreage which shall be identified by the Navajo Nation. The total acreage of the land retained east of the ridge line and identified by the Navajo Nation shall not exceed 35,000 acres. Those portions of the C.O. Bar Ranch retained by the Navajo Nation pursuant to the agreement described above shall be taken into trust for the Navajo Nation, except for the trust allotments therein which have already been taken into trust for the allotees.

2. The Navajo Tribe shall relinquish to the Hopi Tribe a portion of Federal lands not to exceed 35,000 acres (agreeable to the United States, the Navajo Nation, and Hopi Tribe) and contiguous to the C.O. Bar Ranch from the Espil Ranch in equal

acreage to that portion of the C.O. Bar Ranch that has been retained by the Navajo Nation as described above.

3. The United States shall take into trust for the Hopi Tribe the property described in (1) and (2) above. The acreage described in paragraph (2) above shall not exceed 35,000 acres.

4. No lands shall be taken in trust by the United States for either Tribe pursuant to this Agreement until implementing legislation has been enacted.

B. The religious leaders of the Navajo Nation and the Hopi Tribe shall meet to discuss the Sipapu. If they do not reach an agreement within three months of Ratification of this Agreement, the Hopi Tribe and the Navajo Nation shall enter into negotiations regarding the status of land at the Sipapu.

C. The Navajo Tribe shall grant to the Hopi Tribe a corridor to be taken in trust by the United States for the Hopi Tribe linking the 1882 Hopi Reservation with the C.O. Bar Ranch. The Navajo Nation shall draw the corridor line and determine its dimensions.

D. Hart Ranch

The United States shall purchase the Hart Ranch and transfer all of that ranch to the Hopi Tribe. In the event that purchase cannot be made for $5 million, or less, or the state lands cannot be acquired, the United States shall pay to the Hopi Tribe $5 million if no other alternative can be agreed upon.

E. The United States shall pay $15 million to the Hopi Tribe.

F. The United States agrees to assist the Hopi Tribe in managing the HPL land and the newly acquired lands.

G. Cliff Springs

The parties agree that members of both the Navajo and Hopi Tribes shall be given free and unimpeded access to all identified religious on all portions of either reservation. The Navajo Nation agrees that the Hopi Tribal members who are visiting the shrine at Cliff Springs would be able to gather fir branches outside the two-mile radius established in 25 U.S.C. § 640d-19 and that members of both the Hopi and Navajo tribes be given free and unimpeded access to all identified religious shrines on all portions of either reservation, provided the Hopi Tribe meets with the local Navajo residents near Cliff Springs prior to the initial visit and establishes amicable relations with the Navajo residents prior to gathering fir branches.

VII. UNITARY SETTLEMENT

The parties agree that each of the provisions of the Agreement are interrelated and interdependent on the other provisions of the Agreement. If an implementing agreement is reached, the parties, and each of them, agree that they will not offer or agree to anyone offering on their behalf any additions or amendments to any legislation necessary to effectuate this Agreement and that the amendment of any one provision releases the parties from their agreements reflected in the provisions of this Agreement.

In addition, the parties to this Agreement recognize that it would not be a violation of this Agreement for the Navajo Nation

to seek independent of this Agreement, and outside of any legislation implementing this Agreement, Congressional authorization to have any of the Espil Ranch taken in trust for the Navajo Nation. If the Navajo effort is successful, the transfer into trust shall occur wholly outside the provisions or scope of this Agreement. In any event, however, the Navajo Nation agrees that it will continue to support legislative approval of the terms of this Agreement regardless of whether its efforts respecting the Espil Ranch are successful.

Peterson Zah
President, Navajo Nation

Vernon Masayesva
Chairman, Hopi Tribe

Lee Brooke Phillips
Counsel, Manybeads Plaintiffs

Peter R. Steenland Jr.
United States Department of Justice

Harry R. McCue
United States Magistrate Judge

Daniel L. Jackson
United States Department of the Interior

October 30, 1992

Navajo-Hopi talks hinge on religion

By Mary Wicoff
Western Bureau

TUBA CITY, Ariz. — The fate of the land-dispute talks between the Hopi Tribe and Navajo families hinges on whether the Hopis respect the families' religious rights, the Navajo Nation said Monday.

"The Navajo families have told me that this is about our religion, the Navajo religion, not about land or money," Navajo President Albert Hale said in a news release. "They have been systematically denied the opportunity to practice the basic religious freedom that every person in the United States takes for granted as a fundamental right."

However, the Hopis answered that they are not stopping anyone from practicing religious freedom. Instead, the fate of the talks depends on whether the families are united in wanting to continue implementation of the agreement-in-principle or whether they support the Navajo Nation's contention that the agreement is dead.

"We're getting mixed signals on this," Eugene Kaye, an assistant in Hopi Chairman Ferrell Secakuku's office, said Monday. "The families aren't together. They need to do so (unite) so we won't be wasting our time. We just want to know what their position is."

The Hopi Tribe is moving ahead with implementation of the agreement which would allow about 250 families to remain on Hopi land under 75-year leases, and has said that negotiation is over. However, last December, the Navajo Tribal Council passed a resolution declaring the 1992 settlement proposal dead.

Federal mediator Harry McCue has called a meeting for Saturday and is expected to decide whether to proceed with the settlement or return the issue to court.

See Navajo-Hopi, Page 2

Navajo-Hopi / Talks hinge on religion

The talks stem from a 1988 lawsuit which claims that the 1974 relocation law violates the Navajos' First Amendment religious rights because their religion is tied directly to the land where they live.

The land at issue was part of acreage Congress once designated as joint-use, but later partitioned to each tribe and ordered that members of each tribe move off the other tribe's land. About 250 Navajo families refuse to move from the land which was partitioned to the Hopis.

The Navajo families have brought up religious-freedom issues at the last two meetings with the Hopi Tribe, asking to be allowed to practice unrestricted religious ceremonies near their homes.

The Hopis have said that most of those religious-freedom points are already addressed in the agreement or in Hopi ordinances. Other demands are outside the framework of the agreement and should be addressed later.

Kaye said that when the original lawsuit was appealed, the Ninth Circuit Court of Appeals ordered the tribes to consider accommodating the people in some way, but didn't say that religious rights must be foremost in the accommodations.

Besides, the Navajos are being too broad in saying what constitutes their religious practices, he said.

Hale said in his release that the families are denied the opportunity to bury their dead, are assessed fees in some cases to practice their religion and must apply to the Hopis for permits to build religious structures and gather materials for Navajo ceremonies.

"The Navajo families want to see the 'land dispute' ended, but they also made the reasonable request that the Hopis agree to allow them to once again engage in the free practice of religion, which is essential to the lives and social fabric of the Navajo people," Hale said. "Where else in America is any group of people expected to trade away their religious freedom at the bargaining table?"

Kaye said that Navajo burials are prohibited on Hopi land, but the families are free to set up cemeteries on the nearby Navajo Partitioned Land. The Hopis are looking to the future, he said; if the families have burials on Hopi land and then leave, the Hopis would not be able to make full use of that land.

He also agreed that building permits are required for any structure at no charge, and many have been granted. Those structures are considered temporary, however, and must be dismantled later.

Permits are required to gather some materials, such as wood, he said. But the Navajos are free to gather certain materials such as green boughs or certain small trees to be used in ceremonies.

There are never any fees to practice religion or to hold religious meetings, Kaye said.

"Relocation does not deny them the opportunity to practice their basic religion," he said. "It's not as bad as they make these things out to be."

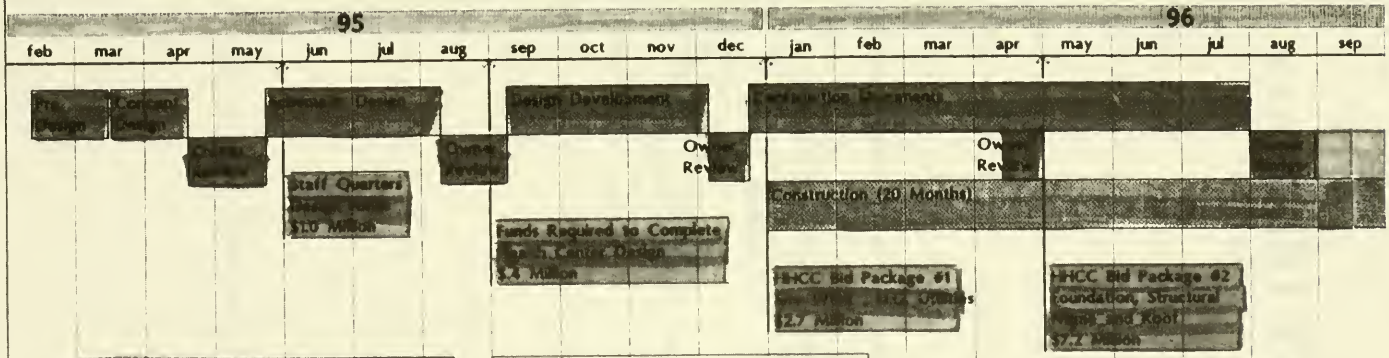
If the Navajo families stay on Hopi land, then they have to follow the tribal ordinances — which the Hopis have to follow, too. There have to be some restrictions on the use of natural resources, Kaye said, adding that every religion — even natural law — has restrictions.

Hale said that the traditional Navajo families are saying that religious freedom is non-negotiable and that the free practice of religion must be accommodated without restrictions.

At a March 3 meeting, the families indicated their willingness to continue the mediation process, but not at the expense of their religious freedoms.

In a statement to the Hopis, the families said, "We are hoping that these discussions can lead to better understanding between the Navajo and Hopi people and to the settlement of the 'land dispute.' "

Proposed Design and Construction Funding Schedule for HOI



FY 96 Funds Required	
Complete Health Center Design	$.4 Million
Begin Health Center Construction*	$9.9 Million
Staff Quarters Design	$1.0 Million
Total FY 96 Funds	$11.3 Million

FY 97 Funds Required	
Complete Health Center Const.*	$21.8 Million
Staff Quarters Construction and Equipment	$13.1 Million
Total FY 97 Funds	$34.9 Million

* Includes Cost for Hopi Tribe and A/E Contract Administration

THE HOPI TRIBE

95 MAR 15 PM 2:03

March 15, 1995

Ferrell H. Secakuku
CHAIRMAN

Wayne Taylor Jr.
VICE-CHAIRMAN

Lee Phillips, Esquire
Big Mountain Legal Office
Post Office Box 1509
Flagstaff, Arizona 86002

Dear Lee:

Enclosed is the Hopi responses to the Navajo requests in the March 3, 1995 statement.

We look forward to seeing you on March 18, in Phoenix.

Sincerely,

Ferrell Secakuku
Chairman
Hopi Tribe

Enclosure

DS01/1264-1

P.O. BOX 123 — KYKOTSMOVI, ARIZONA — 86039 — (602) 734-2441

March 15, 1995

MEMORANDUM

To: Lee Phillips

From: Hopi Tutskwa Team

Re: Responses to Navajo Requests in March 3, 1995 Statement

1. Ground Rule 1, pp. 3-4. The Hopi Tribe does not intend to discuss matters that are already covered in the AIP or the Accommodation Agreement. Otherwise, with regard to the details of implementing and understanding the Accommodation Agreement, the Hopi Tribe intends to consider the concerns raised by the Navajo families. In addition, the Hopi Tribe is assuming that the representatives of the families are the key decision makers who will be able to secure needed approvals from the families. If this is incorrect, we need to know that.

2. Ground Rule 2, p. 4. The Hopi Tribes is indifferent to the process of decision making the Navajo families uses as long as it does not cause delay. Under the schedule proposed in Ground Rule 7, the meetings should be completed by mid-May, and the Hopi Tribe intends to stick by that.

3. Ground Rule 3, p. 4. The Hopi Tribes does not believe that press releases following each meeting are necessarily appropriate. However, it does agree that whatever

press releases are issued should be jointly approved so discussion are carried on face to face between parties and not in the newspapers.

4. Ground Rules 4, 5 & 6, p. 4. The Hopi Tribe has no objection to these ground rules.

5. Ground Rule 7, pp. 4-5. The Hopi Tribe is eager to complete this process and hopes that the parties can agree on mutually convenient times that would allow us to complete it by mid-May.

6. Religious 3, p. 6. The Hopi Tribes does not agree with this language and believes that the preamble already set forth in the Accommodation Agreement is sufficient.

7. Religious 4 a), p. 7. The Hopi Tribe has already agreed to grant permits for religious construction at homesites and to continue granting permits for temporary structures as it has in the past. The Tribe is willing to discuss how to accommodate the gathering of materials under the Hopi ordinances.

8. Religious 4 b), p. 7. The Hopi Tribe does not charge fees for the right to exercise religion. It does charge fees for certain activities on its reservation, such as grazing, hunting, etc. These are general fees which are directed at everyone on the Reservation.

9. Religious 5 a) & b), p. 7. With regard to fences that have already been constructed, the Hopi Tribe has complied with the SHPO process. As part of that process, it asked the Navajo Nation whether there were sacred sites that would require the

adjustment of the fence line several feet in any direction. Each of the sacred sites identified were dealt with before the fences were constructed. The Hopi Tribe will continue to comply with this process in the future as fence lines are designed and built.

10. Religious 5 c), p. 7. The Hopi Tribal Council has considered the burial issue on several previous occasions and has currently decided that the policy expressed in the Accommodation Agreement is appropriate.

11. Religious 5 d), p. 7. The Hopi Tribe is willing to discuss how the Woodland Ordinance applies to this activity.

12. Religious 5 e), pp. 7-8. Assuming that all parties give each other common courtesy and respect, the gathering of plants and herbs should not be a problem.

13. Religious 5 f), p. 8. The Hopi Tribe is willing to consider the map of sacred areas as it implements its Comprehensive Land Use Plan.

14. Religious 5 g), p. 8. The Hopi Tribe will continue to permit temporary religious structures as it has in the past, which has worked very well without incident. Permit conditions regarding dismantling can be worked out at the time of each request.

15. Religious 6, p. 8. Navajo individuals are always free to talk to Hopi individuals about subjects of their mutual choosing.

16. Religious 7.A.1., p. 8. The Accommodation Agreement grants certain rights and privileges that allow, among other things, the construction of hogans and ceremonial structures. In addition, as stated above, the Tribe is willing to consider mapping of Navajo sacred sites and to allow herb gathering. Thus, the activities the

individuals are concerned about are already dealt with.

17. Religious 7.A.2., p. 9. The burial issue has already been considered by the Hopi Tribal Council (see item #10 above).

18. Religious 7.A.3., p. 9. The number of homesites is already set up in the AIP. With regard to the size of those homesites, the Hopi Tribe has already committed to readjust the homesites boundary where necessary so as to include all of the people residing at that site.

19. Religious 7.A.4., p. 9. Currently the Navajo individuals have permits for less than 1,600 SUYL. 2,800 is a substantial increase and uses up all of the available forage. Until a new range survey shows that more forage is available, the Tribe is not inclined to revisit this discussion.

20. Religious 7.B.1., p. 9. The seventy-five year provisions is not open for discussion. As stated in the Accommodation Agreement, it can be revisited after fifty years.

21. Religious 7.B.2., p. 9. The issue of rent is between the Navajo Nation and the Hopi Tribe.

22. Religious 7.B.3., p. 9. The Hopi Tribe's position on eviction is spelled out in the AIP and the Accommodation Agreement. People who cannot comply with the law will not be allowed to stay.

23. Religious 7.B.4., p. 9. The Hopi Tribe's position on jurisdiction is spelled out in the AIP and the Accommodation Agreement. It is based on the proposition that the

Hopi Reservation is Hopi land.

24. Land Use 3, pp. 10-12. The boundaries for a homesite and farming are set in the Accommodation Agreement. As set forth in the Accommodation Agreement, Navajo individuals will be able to continue their traditional use of other parts of the Hopi Reservation. This use is not exclusive, however, and must be done pursuant to Hopi Ordinances.

25. Land Use 4, p. 12. The Hopi Tribe will administer the permit system that applies to Navajo individuals in the same manner as it administers the permit system generally applicable on the Hopi Reservation.

26. Land Use 4 a), p. 12. As set forth in the Accommodation Agreement, each homesite will be three acres and each farming area will be up to ten acres.

27. Land Use 4 b), p. 12. The Hopi Tribe has already stated that additional residential structures will be permitted at Navajo homesites, but not outside them.

28. Land Use 4 c), p. 12. The issue of rental is between the Navajo Nation and the Hopi Tribe.

29. Land Use 4 d), p. 12. The Accommodation Agreement and the AIP already state that grazing permits will be issued, where possible, for land near the homesites.

30. Land Use 4 e), p. 12-13. Navajo individuals, as residents, will be allowed to participate in future planning processes.

31. Land Use 5, p. 13. The Hopi Tribe intends to use and enjoy its Reservation. Grazing will be allowed where permitted, and efforts to deter lawful use

will be punished. However, Navajo individuals are free to discuss issues with Hopi Tribal members as they please. The Hopi Tribe believes that as set forth in the Accommodation Agreement the parties should be able to cooperate with one another to ensure that everyone's concerns are respected.

32. Land Use 6 & 7, p. 13. The Hopi Tribe will continue to permit grazing pursuant to Ordinance 43. Under the Accommodation Agreement and the AIP, the Nation and the Navajo individuals will decide how best to divide the 2,800 SUYL. The Hopi Tribe will then work with the permittees to allow, where possible, grazing near the homesite. Over time, as more forage becomes available, the Tribe will discuss with the individuals whether and how it should be used.

33. Governance p. 13-14. To the extent that the process of self-governance described here does not conflict with Hopi jurisdiction as set forth in the Accommodation Agreement, the individuals are free to practice it and the Tribe will not interfere with it.

34. Request 1, p. 15. As stated above, Navajo individuals are free to speak to Hopi individuals on any issue.

35. Request 2, p. 15. The Hopi Tribe will not stop impounding livestock, whether Hopi or Navajo, that is trespassing or not permitted. We need to protect the land, and any relationship we enter into with each other must be based on respect for the law.

36. Request 3, p. 15. The Hopi Tribe will continue to monitor its Reservation to assure that the law is being complied with by all persons, Hopi and Navajo, residing on

the Hopi Reservation.

37. Request 4, p. 15. The Tribe is implementing the AIP and reviewing new construction applications in that light. Once we got beyond the interim implementation phase, the freeze ceases to exist. Until then, we must continue to abide by its provisions.

38. Request 5, p. 16. Structures on the Hopi Reservation are demolished only after the SHPO process has been completed and clearance has been given. At present, certain Navajo individuals are abusing the process by moving into hogans that have been quitclaimed by relocating Navajos. This creates tension and is illegal. Until the Tribe finds a better alternative, it will continue to demolish the structures.

39. Request 6, p. 16. Navajo individuals who comply with the law should have no problems. To the extent that Navajo individual can prevent other individuals from breaking the law, the Hopi Tribe will not have to enforce it.

40. Request 7, p. 16. The Hopi Tribe is willing to discuss issues with the BIA and the individuals but is unaware at this time as to what specific sites are of concern.

41. Request 8, p. 16. The Hopi Tribe will continue to permit temporary religious structures as it has in the past, which has worked very well without incident. The conditions of the permit regarding dismantling can be worked out at the time of the request.

42. Request 9, p. 17. The Hopi Tribe is willing to work on this issue.

43. Request 10, p. 17. The Hopi Tribe is willing to work on this issue.

UNITED STATES GOVERNMENT
OFFICE OF NAVAJO AND HOPI INDIAN RELOCATION

Christopher J. Bavasi
Executive Director

STATEMENT

Before the Senate Select Committee on Indian Affairs. In support of Reauthorization Legislation for the Office of Navajo and Hopi Indian Relocation through Fiscal Year 1997.

CHRISTOPHER J. BAVASI, EXECUTIVE DIRECTOR

March 15, 1995

MR. CHAIRMAN:

I am pleased to be here today appearing before this Committee to testify in support of the Reauthorization Legislation currently pending.

The legislation currently pending would reauthorize the appropriation of funding for construction of relocation homes for fiscal years 1996 and 1997. There are currently 750 heads of household who have received from the ONHIR a letter of eligibility for a federal benefit, (replacement housing, bonus, moving expenses, etc.). The Office estimates that upon resolution of pending court cases and administrative appeals approximately 100 additional individuals will be determined to be eligible for benefits. If funding for these benefits is not provided for the Office, individuals determined to be eligible for benefits might sue on a claim that they have been deprived of an entitlement to relocation benefits. In addition, some of these individuals relocated with the expectation that they would be receiving benefits. In order to provide housing for individuals that have been or are likely to be determined to be eligible for benefits, the Office encourages passage of this bill to, at a minimum, provide housing funding for the next two years.

I would also like to note that the Office has been involved during the last three years in extensive re-evaluation and assessment of our program.

In 1993, the Office began a process of critically examining our organization and functions. Although the office was specifically exempt from the Executive Order directing a reduction in staffing, we determined that it was in the best interests of good government and responsiveness to our clients to identify areas

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where we could make savings through reducing expenditures and staffing. Indeed, the Office had already begun to reduce staffing through attrition and a self-imposed freeze on hiring. The staffing of the agency had thus been reduced from a high of 97 in 1992 to a total of 91 persons in 1994. This represents a 6 percent staff reduction.

From a management perspective, we viewed the National Performance Review initiatives as a positive opportunity to continue to implement those policies and activities begun in 1993, specifically as concerns the intention to down-size. That is precisely what we have done, and it has provided us a specific, systematic means to accomplish an orderly reduction in spending and staffing, while continuing to provide service to our clients and conclude the relocation program.

As part of the reinvention process, the Office held several one-day, all staff sessions, during the summer and fall of 1994, dealing with any matter which any staff member felt would improve the operation of the agency. As a result of these discussions, the Office developed a list of administrative changes and improvements that fell into two categories; those which could and have been implemented immediately, and those which would require further development prior to implementation. The Office has also, as a result of the reinvention process, altered its organizational structure to establish a plan for self-directed work teams in all of the areas of office operation. This restructuring, when fully implemented during the next two to three months, will result in reduction of the number of individuals with supervisory responsibility which will be in excess of the National Performance Review goals set by the President.

Finally, we are currently in the process of conducting our customer satisfaction survey, as required by the reinvention process, and should have final results by mid-summer of this year.

In late September of 1994, the Office began preparation of a relocation completion and agency phase-out plan requested by the House Interior Appropriations Subcommittee. We utilized many of the existing elements of our reinvention process in the plan for relocation completion. New elements have been included in the relocation plan as a result of the House Interior Appropriations Subcommittee's request for a plan to finalize the relocation process and transfer the function of the agency to a successor entity. We have provided copies of this plan to your Committee.

The Office believes this plan offers the best potential for completion of relocation in the event that the mediation effort ordered by the United States Court of Appeals for the Ninth Circuit fails. The mediation effort seeks to achieve a consensual resolution under which Navajos who wish to remain on Hopi land could do so under a 75 year lease arrangement providing an option to relocation. The plan for relocation completion contains recommendations for; incentives which would assist the Hopi Tribe in re-establishing its presence on the HPL, incentives to encourage the remaining Navajos residing on the HPL to voluntarily comply with relocation, and alternative compensation strategies for non-HPL residents for whom an actual physical relocation is not feasible.

Finally, the Plan briefly addresses the issue of involuntary relocation of those individuals who do not make timely arrangements to relocate. The existing Act mandates that members of one tribe relocate from lands partitioned to the Tribe of which they are not members, regardless of whether the party wishes to move. Congress anticipated that some households would not make timely application for benefits or choose to relocate. Accordingly, the Act authorized the Office to take that household's benefits and acquire or construct a replacement home for such families off of the lands of the other tribe. The Office is charged with constructing homes off of the HPL for Navajos eligible for benefits who do not make a housing selection. Absent clarification from either Congress or the courts as to a deadline for voluntary relocation and a timeframe for construction of housing for individuals who will not voluntarily participate in the program, this agency cannot forecast a plan or budget for completion of relocation.

I believe the plan, which also includes an update to the historical background of relocation and its statistical elements, presents a clear representation of the many issues involved, illustrates how we reached our conclusions and demonstrates an orderly means to reduce and eventually eliminate the Office.

To the extent possible we have tried to quantify information to demonstrate how conclusions were reached and assure the minimum adverse impact to those persons being relocated. In achieving down-sizing in advance of phase-out we have carefully considered and suggested means to protect employees' rights.

I believe the information in the plan demonstrates a commitment to the continuing aim of reducing the size of government, but also assures that the government can retain qualified employees to carry out the remainder of the relocation program.

I thank the Subcommittee for its attention and we will be pleased to respond to any questions you have for us.

FOREWORD

The 1995 Appropriations Committee report language instructed the Office of Navajo and Hopi Indian Relocation to prepare a phase-out plan. The Committee Report states in part:

> "The Committee believes it is time to begin phasing out the Office and to turn over the remaining relocations to another agency such as the Bureau of Indian Affairs. The Committee expects the Office to submit a plan for the phasing out of the Office and the transitions of its responsibility to a successor entity. The Report should be submitted to the Committee no later than February 1, 1995, and should assume that transfer of functions will occur before the year 2000 and the cost to administer the program will be successively smaller in each year, beginning in fiscal year 1996."

Additionally, the Subcommittee on Interior and Related Agencies instructed the Comptroller General to prepare recommendations on the closure of the Office and on a successor entity. Office staff have worked closely with the General Accounting Office staff assigned to this task during the last six months. The Office of Navajo and Hopi Indian Relocation determined that the best approach to preparing the plan called for by the Committee was to work to the maximum extent possible with GAO staff and to benefit from their outside perspective once they had sufficient time to review the program before formulating its elements. The ONHIR feels that the plan being submitted herewith is based on a combination of the expertise, experience and historical perspective of ONHIR staff and the external perspective provided by GAO staff. The ONHIR has relied upon GAO staff's assessment of workload factors and has shared the elements of the proposed plan for completing relocation and phasing out the Office with GAO staff throughout the process. Because the Committee instructed the GAO to make recommendations on ONHIR's plan, none of its elements were included before they had been thoroughly discussed. The GAO staff and the ONHIR felt that accord had been reached on these elements.

The staff of the ONHIR wishes to thank the GAO staff who were involved in this process as the analytical data they provided as well as the arms length perspective on the agency's operation were extremely useful in the preparation of this plan.

SECTION 2: RELOCATION COMPLETION/PHASE-OUT PLAN

SECTION 2 contains all the components of the phase-out plan requested by the Committee. All of the subsequent sections are background information on the various major program activities. All of the statistics reflected in **Sections 2** through **6** are as of September 30, 1994 (the end of fiscal year 1994), unless otherwise noted. Since its inception, the ONHIR, has submitted periodic updates to the Report and Plan of 1981. The Office was in the process of updating its plan when the request from the Committee for a phase-out plan was received. The Office determined that making the regular Plan Update an integral part of the phase-out plan to provide general background information and more current statistics was the best approach to satisfying the Committee's request for a phase-out plan.

2-1: EXECUTIVE SUMMARY

This **Executive Summary** provides an overview of **Section 2**, which deals with relocation completion and agency phase-out. Hereafter, this section will be referred to in the narrative as "the plan".

The general approach to, and specific elements of, the plan were developed in consultation with GAO staff and with input from ONHIR supervisors and staff. During the last 10 years, there have been a variety of external initiatives affecting the operation of the ONHIR. They have consisted of, but not been limited to, proposed legislation, enacted legislation, court ordered mediation, court decisions and a presidential mission. This is the first time that the Office itself has been directed to prepare a plan that includes actions and initiatives that the Office believes have the best potential for ultimately completing relocation and phasing out its operation. The task of the ONHIR is unique in the history of the United States and management believes that the combined knowledge and experience of the Office staff places it in an excellent position to propose alternatives and solutions which should lead to the completion of this project. It is noteworthy

that the combined experience of ONHIR staff is in excess of 1,000 person-years dealing directly with this unique and difficult problem.

The most logical place to begin this plan is with a discussion of the actual workload remaining to be accomplished in order to complete relocation. Therefore, **Section 2-2** deals with the number of families remaining to be relocated. There are two primary categories of future workload factors. The known workload factors consist of those families who have been certified eligible for relocation and have not yet received their benefits, as well as additional individuals in various categories who the Office can accurately predict will become eligible for relocation benefits. The second category consists of those families who might become eligible through further new litigation.

Section 2-3 deals with the various impediments to relocation. The Office understands the Committee's frustration with the apparent slow progress of relocation because it has experienced this same frustration over the years. Reports to, and testimony before, the Committee over the years have contained general reference to these impediments. This section seeks to supply more specific details of these impediments in order to provide the Committee with a better understanding of them as they consider the Office's plan. These impediments are broken into two primary groups: client related impediments, and program related impediments.

Section 2-4 discusses a variety of solutions to these impediments. These solutions take two principal forms: legislative, regulatory and procedural changes, and new incentives to those affected by relocation.

Section 2-5 discusses the sequencing of events that will take place during the completion of the relocation program. The various elements discussed in **Section 2-4** would be proposed to take effect at different stages of the completion process.

Section 2-6 is a discussion of the personnel and budgetary resources needed to accomplish the completion of the relocation effort.

Section 2-7 deals with the personnel issues involved in phasing out the program.

Section 2-8 summarizes the proposed legislative changes to accomplish the ONHIR plan for completion of relocation and phase-out of the Office.

2-2: FUTURE WORKLOAD FACTORS

The GAO staff worked extensively on establishing the quantity and nature of the Office's future workload factors. The workload factors reflected herein are those developed by the Office and GAO staff utilizing agency records and augmented by both Hopi Tribe and Navajo Nation input. In order to be consistent throughout this document, the figures reflected here are as of the end of fiscal year 1994. It is the understanding of the Office that GAO intends to update its figures through the end of calendar year 1994 for its report to the Committee.

Future workload factors are divided into two major categories: the known or accurately estimable families remaining to relocate, and the potential additional eligible heads of household based on possible litigation.

As of the end of fiscal year 1994, there were approximately 913 to 963 heads of household in the first category.

This number is comprised of four basic groups as reflected below:

- 748 certified heads of household awaiting relocation;
- 25 additional heads of household who will be certified as a result of court decisions;
- 90 additional heads of household who will be certified as a result of the agency administrative appeal process; and

- 50 to 100 additional heads of household who are currently residents of the Hopi Partitioned Lands who have never applied for benefits. (The Federal Mediator's estimate is approximately 150).

It is important to note that the individuals in this category either already have received, or will receive a written notice of eligibility for relocation benefits. These are individuals who are already, or will become, vested in a government entitlement.

The second category is much more difficult to quantify. They fall into two main groups.

The first of these is comprised of those individuals who have not yet received an agency final determination, and who upon receiving a final denial, will still have six years in which to file in federal court for a reconsideration of their eligibility. There could be as many as one hundred additional eligible heads of household derived from this group.

The second group consists of all of those individuals who were notified of their denial and personally signed for their notification, and as a result, were excluded from reconsideration under the case of Sands v. NHIRC, CIV 85-1961-PCT-RCD (Sands). Recently, the Navajo-Hopi Legal Services Program has repeatedly requested that the Office reconsider some of these cases because there is sufficient prima facia evidence of their eligibility. The only basis on which their denial was upheld by the court in Sands v. NHIRC was that they failed to provide adequate documentation and had been notified of this fact and had personally signed for their own certified letter of denial. The Navajo-Hopi Legal Services Program contends that this should not alter the facts of the case and they may well bring additional litigation to have these previously excluded members of the Sands v. NHIRC case included in the original order for reconsideration. This could result in an additional 600 to 700 certifications, according to the Navajo-Hopi Legal Services Program.

This analysis provides a best and worst case scenario ranging from a low of approximately 900 to a high of up to 1,700 individuals to whom the Federal Government would have a responsibility to provide relocation benefits.

For the purposes of this plan, the ONHIR is only considering the approximately 900-950 heads of household whom it can presently accurately predict are, or will become, entitled to benefits.

Of these heads of household, there are a certain number of whom for a variety of reasons that will be discussed later in the report, will never actually receive a replacement home. Using a variety of predictive factors such as age, education, English fluency, relocation site preference, household size and case status, the Office predicts that approximately 725-775 households will receive a new relocation home. The others will, in all likelihood, have to be dealt with in some other manner such as cash payment. Based on historical averages and recent experience (100-150 relocations per year), this extrapolates to a period of five to seven years to complete the actual physical relocations of those families who the Office predicts will eventually receive replacement housing. Following completion of all of the voluntary physical relocations the workload would consist of the following elements:

- Construction of homes for Navajo residents remaining on the HPL, who have not made timely arrangements for relocation, at a prescribed site (the New Lands);

- Payment of monetary compensation in lieu of replacement housing for those Navajos not residing on the HPL who have been unable to receive a replacement home for a variety of reasons;

- Two year post-move services, as provided to all previous relocation families, consisting of home warranty, post-move counseling, etc.; and

- Preparation for records retention and transfer, and other administrative shut-down procedures.

It is estimated that all of these activities could be accomplished during the two year post-move services period.

Based on the above, it is estimated that a minimum of seven to nine years will be necessary in order to complete relocation.

2-3: IMPEDIMENTS TO RELOCATION

To an outside observer, the issue of relocation would appear to be a relatively simple and straightforward one. To the average non-Native American, the prospect of receiving a new home free of charge would seem to be an overriding incentive to cooperate with the relocation program. This attitude among non-Native Americans stems from a vastly different cultural perspective represented by issues such as: the relative value placed on modern home ownership; the high mobility of the majority of the American population; possession of economic skills which are in demand; relative unimportance of close extended family ties; familiarity with non-reservation institutional requirements (taxes, utility payments, etc.); fluency in the English language; and the relative ease with which they are able to assimilate into a new community. To understand the many impediments to relocation, one must be fully aware that the majority of the Native American population still remaining to be relocated do not place the same relative value on modern home ownership, and do not possess the various coping skills mentioned.

These impediments fall into two principal categories: legal, regulatory and administrative restrictions; and personal impediments specific to the individual client.

The full array of legal, regulatory and administrative impediments are too numerous to mention in this report, and in point of fact, any governmental program should be expected to deal as efficiently as possible with the majority of them. There are, however, some impediments unique to this program which should be examined and could be removed through legislative action. These impediments are enumerated below and specific remedial action to each is proposed in the following section.

- No involuntary component to the relocation program.

  The ONHIR is charged with accomplishing voluntary relocations. There is nothing within the enabling legislation which authorizes the Office to enforce any action of an involuntary nature. When District Six was awarded exclusively to the Hopi Tribe, the Navajo Nation and the BIA oversaw, and participated in, the removal of Navajo residents from that geographic area. The Navajo residents of the HPL observed this activity and are acutely aware of the fact that throughout the entire history of the relocation program, no official mention of involuntary relocation has ever been made. This is clearly a policy issue which is beyond the authority or responsibility of the Office. However, it must be understood that if the relocation process is ever to be completed and full control returned to the Hopi Tribe over their portion of the disputed lands, the issue of involuntary relocation must be addressed, unless some form of mediated settlement is reached.

- Lack of Hopi presence on the HPL.

  The Hopi Tribe has been unable to put forth any real effort to establish their presence on the HPL even though many geographic areas have been totally cleared of any Navajo residents.

The Navajo residents of the HPL are aware of this fact and are convinced that the Hopis will never use the land and have no need for the land. Parenthetically, it should be noted that the major publications dealing with this issue have pointed out this same fact. As long as the Navajos are convinced that the Hopis will not use the HPL and have no need for the HPL, there is no real pressure for them to consider relocation and it strengthens their belief that the whole process is unneeded and unfair.

- Lack of grazing enforcement on the HPL.

  Currently, there is little or no enforcement of illegal grazing or grazing permit levels on the HPL. Because of the drastically reduced number of residents on the HPL, some of the remaining residents are grazing far in excess of their legally permitted level. Many graze with no permits at all. As a result, even the offer of 80-120 sheep units is not attractive to these existing HPL grazers because they are able to graze far more where they are currently located than they would be able to on the New Lands. Even those who are not exceeding their permit levels have the strong feeling that it is extremely unfair for them to be required to move, when they see no evidence of the Hopis using those parts of the HPL that have been vacated.

- Unwillingness of border chapters to grant homesite leases.

  The chapters which lie along the partition line border have been called upon to accept a large increase in their population and a corresponding increase in the burden on their already limited infrastructure in order to grant homesite leases to those individuals who are members of the chapter, but who are residing on the HPL side of the partition line. These host chapters have

become understandably reluctant to grant further homesite leases to those individuals either still living full time on the HPL or those individuals who have left the HPL but have not yet received their relocation benefits.

- Bennett Freeze development.

  Related to the item above is the issue of the Bennett Freeze area which has recently been opened up for development by the federal courts. The majority of the land in the Bennett Freeze area was awarded to the Navajo Nation by the court decision (this decision is currently under appeal by the Hopi Tribe). This area has received almost no funding for infrastructure improvements since the freeze was put into effect decades ago and requires a great deal of development in order to provide sites for relocatees as well as for non-relocatees. Congress recognized this court decision by funding the Navajo Nation for the construction of 100 homes in the area last year.

- Lack of grazing regulations on the NPL.

  There are currently no grazing regulations in effect on the NPL. This further complicates the problem of persuading border chapters to grant homesite leases to relocatees. The existing residents of the border chapters are understandably reluctant to grant homesite leases to individuals who have a tradition of grazing, when there is no formal legal method by which they can protect their own grazing rights. Additionally, the NPL is in serious need of range improvement to support the existing livestock, let alone any new grazing permits.

- Ineligible HPL extended family members.

  While there are a relatively small number of eligible households still residing on the HPL (approximately 150-200), their families have additional extended family members who have reached head of household status since the July 7, 1986 application deadline. Obviously, those heads of household remaining on the HPL are among the staunchest resistors to relocation. They observed during past years, the children of their neighbors attaining head of household status before the application deadline and now feel that an arbitrary deadline excluding their children from relocation benefits is unfair. They believe it is the time at which an extended family decides to relocate that should control the determination of eligibility rather than the deadline established by legislation and regulation. Recently, a substantial number of these households have indicated that they would be willing to relocate if their children were also provided for. **Appendix 1** provides a number of actual case contact reports reflecting this fact. They have been redacted for privacy.

- Lack of authority to grant discretionary homesite leases.

  Because of the amount of time that has passed since the Office began relocating families to the New Lands, many families have children who have married and become heads of household themselves. In the traditional Navajo way these family members would build their own homes close to their parents. Since the children are not eligible for relocation, they cannot be granted a homesite lease on the New Lands, under current procedures. There are also a fairly large number of eligible heads of household who have not yet relocated, and who have extended family members who are not eligible for benefits but have indicated they would move to the New lands if their children could, at a minimum, get a homesite lease.

- Lack of authority to grant discretionary New Lands Grazing Permits.

  The Office originally established two priority levels for eligibility for grazing permits on the New Lands. Priority one actually was utilized to determine the number of sheep units to be granted to each grazer. This was accomplished by dividing the total number of individuals in priority one into the total livestock carrying capacity of the New Lands. Currently, approximately two-thirds of the grazing permits on the New Lands are not being utilized. On April 2, 1991 the Office published regulations which would have given the priority one individuals until June 1, 1992 to take advantage of their entitlement to a grazing permit. Following that date the Commissioner would have had the discretion to issue permits that facilitated the relocation effort to individuals in the lower priority category. The Justice Department, as a result of the mediation process, requested that the Office postpone indefinitely the effective date of that regulation. The Office complied with that request.

- Archaeological delays.

  Increasingly, the ONHIR's fulfillment of responsibilities of the National Historic Preservation Act and other related legislation, has added to the delay and expense of the program. The archaeological clearance process applies to every activity this agency undertakes. The Office first became aware of and involved in this process when it began to develop the New Lands. Until that time, the Office had no Cultural Resource Manager or archaeological staff. With the inception of the development of the New Lands and the inclusion of an archaeology component within the agency, it was realized that the property disposal on the Hopi Partitioned Lands was also subject to the archaeological clearance process. Most recently, the agency's Cultural Resource Manager has determined that

this process even applies to acquisitions off of the reservation (purchase of resale homes anywhere off the reservation.) The expense and time delay of this requirement cannot be over-emphasized.

- Impediments related to individual relocatees.

  Impediments related to the specific circumstances of individual relocatees are not correctable by legislative action. However, an awareness and understanding of them is critical to appreciating the slowing pace of relocation as the Office nears the end of the program. Families who were unaffected or minimally affected by impediments relocated earlier in the program. Increasingly, with the passage of time, the remaining relocatee population are those who have many impediments to relocation. A partial list of the more common problems is stated below:

  - Client is unable to obtain a homesite lease in desired relocation area;

  - Client's health is poor and must remain near Indian Health Service Hospital and no relocation site is available;

  - Client has employment related restrictions (i.e. no site available close to present employment or unable to support him or herself at new site because of lack of employment);

  - Client possesses livestock and is unable to obtain a grazing permit in any location on the existing reservation and is ineligible for New Lands permit;

- Client is unable to obtain a site on-reservation and does not qualify for an off-reservation move;
- Client has credit problems;
- Client has no transportation, severely restricting the suitability of alternative living sites;
- Client is able to obtain homesite lease, but no utilities are available at the new site;
- Client incarcerated at some point in time following certification;
- Client is incompetent, can't live alone, and has no relative willing to become guardian (under the terms of the Disabled Americans Act, these individuals are still eligible for benefits);
- Client has severe problem with substance abuse;
- Client is estranged from his or her spouse and unable to obtain cooperation from them in accomplishing relocation;
- Client has severe psychological problems;
- Client is waiting for the outcome of mediation; and
- Client wishes to move, but is subject to severe pressure from family members and other resisters in his geographic area;

This is only a partial listing of the personal, client related difficulties which impeded relocation. **Appendix 2** is a compendium of casefile summaries which will provide the reader a more personalized understanding of the problems which may affect many of our families who have not yet relocated. These casefile summaries have no casefile numbers or names in order to protect the privacy of the clients.

2-4: PROGRAM CHANGES AND INCENTIVES

Section 2-3 outlined the principal impediments to completing the relocation program and this section will enumerate proposed program changes to address those impediments. The Office believes that the elements put forth in this plan provide the highest degree of likelihood possible for achieving completion of the relocation program. The proposed program changes are presented in the same order as the impediments were presented in the previous section, for ease of reference.

- No involuntary component to the relocation program.

  This is probably the largest, single impediment to completion of the relocation program. The Committee has indicated its frustration with the slow pace of relocation. Since the ONHIR only has authority for voluntary relocations, the pace of the activity is of necessity largely dictated by the willingness of the Office's clients to cooperate with the program. Obviously, the only way to address this impediment is through legislative action which would result in a definite deadline for relocation beyond which the program would become involuntary. This is clearly a national policy issue beyond the purview of the ONHIR. The Office does not, therefore, presume to take a position either for, or against, such legislative action. However, we would be remiss if such an alternative were not discussed in the plan to complete relocation and phase out the Office. The relocation

program as envisioned by Congress and executed by the Office, has been a thorough and generous one. Included in the relocation completion plan are additional incentives which would enhance this spirit of thoroughness and generosity, if no mediated solution is achieved. If Congress elects to implement the incentives contained in this plan and no mediated solution is achieved, it might also wish to consider setting a definite date for the end of voluntary relocation followed by a phase-out period during which the Office would construct homes, probably on the New Lands, for those few remaining on the HPL, who had failed to make timely arrangements for relocation. The fact that these are trust lands would place the United States Government, through the Justice Department, in a position to take the necessary actions to return full control of the HPL to the Hopi Tribe. It would also appear that the Hopi Tribe has standing with the courts to initiate such an action. Whether or not any language addressing involuntary relocation is included in any amendments to the Relocation Act resulting from this plan is beyond the control of the Office. If no such provision is included, however, Congress must understand that the Office would continue to rely only upon the willing participation of the remaining heads of household to be relocated.

- Lack of Hopi presence on the HPL.

  The Hopi Tribe has been unable to re-establish their presence on the HPL largely as a result of a lack of resources to develop it. Assisting the Hopi Tribe to re-establish their presence on the HPL is one of the most critical elements of the Office's plan to complete relocation. Three important objectives would be accomplished through this approach. First, it would begin to establish Hopi presence on the HPL, making clear to the remaining Navajo residents that in fact this land is needed and will be used by members of the Hopi Tribe. Second, within a

short period of time, it would provide a logical and reasonable basis for reinstituting the enforcement of livestock permitting for both Hopis and Navajos on the HPL. Third, it should be noted that the Hopi Tribe has long believed that it was unfair that so little development money was provided to them as a result of relocation and that the vast majority of the funding for this program has and will go to either individual members of the Navajo Nation, or to the tribal government for certain activities and improvements. The funding needed to accomplish the Office's proposed objectives in the Hopi Partitioned Lands would still only be a small percentage of the total cost when this program is completed. It is also noteworthy that many Hopi families who resided in what eventually became the Hopi Partitioned Lands had left that land as a result of conflicts with their Navajo neighbors before the Relocation Act was passed. Therefore, a case can be made that many of the individuals who might receive some benefits under this expanded authority would actually have been eligible for such benefits had they not succumbed to the pressures of the increasing Navajo population, shortly before the Relocation Act was passed. Authority would be needed for the Office to provide range management and improvement, infrastructure development and Hopi residences and ranching activities on the HPL in order to accomplish this element of the plan.

- Lack of grazing enforcement on the HPL.

  The Bureau of Indian Affairs should develop a plan for phasing in enforcement of grazing permit limits on the HPL. The Office does not advocate immediate impoundment of livestock which is in excess of permitted levels. However, it should be made clear to Navajo residents of the HPL who are grazing illegally or

in excess of their permitted levels, that they have a certain amount of time to reduce their herds, or face impoundment. In the absence of such enforcement, those individuals remaining on the HPL who have expanded their herds far beyond their permitted levels have absolutely no incentive to apply for a permit on the New Lands where they are allowed to graze 80-120 sheep units. Last year, for example the Office issued one grazing permit and constructed three homes on a New Lands grazing unit for an extended family from the HPL. This extended family had one permit for 30 sheep units on the HPL. When Office staff did an actual head count of the livestock, preparatory to moving them to the New Lands, the family was found to be in possession of a herd equivalent to 650 sheep units.

- Unwillingness of border chapters to grant homesite leases.

  In order to address this impediment, the Office would recommend that it be provided with expanded authority for infrastructure development (i.e. roads, water, sewer, electricity, subdivisions, etc.) in these border chapters. This would help remove the current barriers to the Office finding relocation sites for the remaining relocatees for whom the New Lands are not an alternative. It would allow the Office to give the surrounding chapters on the NPL good reason to again consider granting homesite leases to relocatees and address the tremendous infrastructure needs in those chapters.

- Bennett Freeze development.

  Providing the Office with expanded authority to assist in the infrastructure development on the Bennett Freeze would have the same effect as the item above. We have recently had

inquiries from many "resisters" who are willing to move to the Bennett Freeze area, if sufficient infrastructure can be provided for them at their relocation site. Last year, Congress recognized the need to develop the Bennett Freeze area by appropriating sufficient funding to the Navajo Nation to construct up to 100 homes for individual Navajos residing in that area.

- Lack of grazing regulations on the NPL.

  It is critical that the Bureau of Indian Affairs expedite the implementation of grazing regulations on the Navajo Partitioned Lands. The Office has been informed that regulations had been finalized and had passed tribal approval and OMB approval, but that they have been placed on hold by the new Navajo administration. The Office's current Range Management Supervisor was previously an employee of the Bureau of Indian Affairs and personally worked on the grazing regulations which were drafted in 1987. The Office would be more than willing to assist or facilitate the finalization of NPL grazing regulations and the services of our Range Management Supervisor could be very helpful in this regard.

- Ineligible extended family members.

  In order to address this impediment, the Office would recommend that it be granted the authority to extend benefits to heads of household who are currently ineligible under the Office's regulations, but who are members of the extended household of certified, eligible HPL residents. The Office would further recommend that this authority be at the discretion of the Commissioner and that no specific eligibility criteria be developed. This authority would be used exclusively as a negotiating

feature and would be exercised judiciously. The Office would recommend against developing eligibility criteria for this group as it would establish equal treatment concerns for families no longer residing on the HPL. The Office would further recommend that language be developed to limit the total number of such "incentive" relocations and/or the number of additional relocations per certified family on the HPL. The Office estimates that less than 100 such "incentive" relocations would be utilized.

- Authority to grant discretionary homesite leases.

The New Lands, as currently planned, has a total of 982 homesite leases available. To date, 329 sites have been selected leaving 653 sites available for selection. With a potential maximum of 725-775 physical relocations remaining, the Office believes that less than half of these sites will be utilized under the current plan and authority. In 1993, the Office requested authority to issue discretionary homesite leases to non-relocatees. The Committee, however, was concerned this would result in a potential shortage of sites on the New Lands for remaining relocatees. Since this is apparently not the case, the Office would strongly urge that authority to grant homesite leases to non-relocatees be approved. Some families on the New Lands have spoken negatively to potential New Lands relocatees about the fact that they are unable to obtain homesites for their children who get married and begin their families. Allowing some reasonable number of leases to individuals in this category would remove a disincentive for choosing the New Lands. Additionally, the Office believes that we could work with the Navajo Housing Authority to obtain housing for these individuals. NHA requires that there be utilities, full archaeological clearances, etc. before it can utilize HUD funding for housing. There is a shortage of qualified sites

on the Navajo reservation. Therefore, the Office has been very successful in co-sponsoring construction projects with the Navajo Housing Authority. Finally, if Congress decides to allow the Office a certain number of incentive relocations for ineligible extended family members of HPL residents, these New Lands homesite leases could be used to accommodate those individuals as well.

- Authority to grant discretionary New Lands Grazing Permits.

  The total number of permits available on the New Lands is 158. To date, the Office has issued 64 grazing permits. There are 94 permits remaining, and there are only 78 individuals remaining on the priority one list. To date, 16 individuals who were on the priority one list have either moved to a site other than the New Lands or have died before relocating. The Office currently has 16 uncommitted permits and it is very likely that more will become available as choices are made by priority one list individuals to relocate somewhere other than the New Lands. Therefore, the Office would propose to activate the regulations that were previously published allowing discretion to issue grazing permits to individuals who are not on the priority one list. There are currently several HPL residents (who are not on the priority one list) who have indicated that they would move to the New Lands if they could be granted a grazing permit.

- Archaeological delays.

  The Office would recommend that Congress consider exempting it from the fulfillment of consultation and reporting requirements under the National Historic Preservation Act and related legislation. The agency's authorizing legislation currently exempts it

from the provisions of the National Environmental Protection Act on the New Lands. Approximately three years ago, the Office discussed with Congress such an exemption, especially in light of the NEPA exemption, however, the National Historic Preservation Council disagreed with such an action. The Office would propose to maintain its cultural resource management section and would continue in an entirely responsible manner with regard to protection and curation of archaeological finds. However, it would be relieved of the time consuming, expensive and cumbersome reporting requirements under Section 106. If it is again determined that it is inappropriate to exempt the Office from the provisions of Section 106, the attendant cost and time delay to the relocation effort must be acknowledged.

- Individual impediments to relocation.

The vast majority of the individual impediments to relocation cannot be addressed through legislation, regulation, or procedural change within the Office. These elements were outlined in an attempt to give the readers of this document a better understanding of the kinds of individual problems encountered by the Office' clients. There are two elements of the plan, however, which address several of the more serious individual impediments. First, increased emphasis on subdivision development, not only on the NPL and Bennett Freeze area, but also throughout the reservation, should provide locations for many of those individuals currently unable to relocate. Second, authority for cash payments at the end of the program to individuals unable to find a relocation site should allow the Government to complete relocation without actually providing homes for those whose personal circumstances simply will not allow it.

2-5: TIME SEQUENCING OF THE PLAN

As indicated in **Section 2-2**, the Office projects a period of five to seven years to accomplish the actual physical relocation of those individuals who will voluntarily relocate to a site of their choosing. The major program changes suggested by the plan in **Section 2-4**, would be implemented in the manner and order indicated below.

The Office would propose that there be a one year window of opportunity, following passage of new legislation, during which permanent full-time residents of the HPL could negotiate with the Office for inclusion of additional extended family members for relocation eligibility. These additional eligibilities would not be an entitlement but would rather be a negotiated incentive between the HPL residents in question and the ONHIR. At the end of one year, this authority for additional incentive relocations would lapse and individuals still residing on the HPL who had not entered into an agreement with the ONHIR to relocate, in exchange for a negotiated number of additional family member relocations, would lose this opportunity. The ONHIR believes that this would provide a very strong incentive for many of the individuals still residing on the HPL.

The ONHIR would develop procedures for, and begin the implementation of, issuance of homesite leases on the New Lands to non-relocatee extended family members of those already residing on the New Lands or planning to relocate to the New Lands.

The regulations implementing the existing authority of the Office to issue grazing permits on the New Lands to individuals in priority two would be activated (these regulations were published in 1992, however, at the request of the Justice Department, they were extended indefinitely before they took effect).

Infrastructure and range improvement on the HPL, as well as infrastructure improvement on the NPL and the Bennett Freeze, would begin to be implemented.

A program placing much greater emphasis on small subdivision development on the NPL and Bennett Freeze and other appropriate areas of the existing Navajo reservation would be implemented. This element is critically needed in order to provide relocation sites for those individuals still remaining to be relocated who do not qualify for off-reservation moves and for one reason or another are not appropriate candidates for relocation to the New Lands.

The Office's Intensified Outreach Program, which was developed more than three years ago, but placed on hold as a result of the mediation, would be implemented.

The Committee Report instructed the Office to make recommendations in its plan for a transition of authority to a successor entity by the year 2000. The Office reviewed this issue with GAO staff, and all parties involved concluded that they could see no advantage to be gained by this transfer of function, either in terms of total dollars spent, or time required to complete the relocation effort. It was also concluded that, depending on the manner in which a transfer of function is accomplished, it could cost considerably more money and take considerably more time to complete the relocation effort. Further, the GAO staff stated, and the Office certainly agrees, that ONHIR staff are the experts in this matter and this expertise should be utilized to complete relocation. Based on these conclusions, the Office developed the following proposal for transfer of function.

The Office should be attached to the Office of the Secretary, Department of Interior in as much as possible the same manner as it originally functioned prior to the passage of P.L. 100-666. A review of the legislative history of the relocation effort makes clear the fact that members of Congress felt it was essential that the

relocation effort be handled by an independent agency. For that reason, the original Navajo and Hopi Indian Relocation was established with three Commissioners appointed by the Secretary of Interior and with its own independent lines of communication to the Office of Management and Budget and the appropriate Committees of Congress. In 1980, the Office was given its own in-house administrative authority and currently performs all of its own administrative functions. It would be essential that this situation be perpetuated in the future in order to avoid serious delays to the program as a result of budgeting, contracting, payment, and other functions. It would, therefore, have to be made very clear that the Office retained its own separate budget authority and administrative authority as it previously did even though attached to the Department of Interior.

The Office believes that if Congress does determine that a transfer of function to a successor entity is necessary, as opposed to allowing the Office to continue in its current configuration, that the transfer to Interior should take effect upon the passage of any other amendments to the Relocation Act that result from this plan. Making the Office a part of the Department of the Interior (while retaining separate budget and administrative authority) would have an additional added benefit. It would provide an opportunity for Office employees to be placed within other agencies within the Department of the Interior during the phase-out period, and would potentially greatly lessen the problems associated with final RIF and close down of the agency. This is especially true since more than 65 percent of the Office's employees are Native Americans and placement of the agency within the Department of Interior would provide them with placement guarantees in the Bureau of Indian Affairs. Additionally, it should be noted that amending legislation on this issue could specify that the independent budget and administrative authority would cease at the end of the actual physical relocation period (five to seven years) and that during the final two years of the program phase-out the Office would be under the more direct administration of the Department of Interior.

The final phase of relocation would be a two-year period of time following the five to seven years needed to accomplish all of the physical relocations. The Office would propose to accomplish the following principal activities during that two-year period of time:

COMPLETION/PHASE-OUT

- Notify all remaining HPL residents that they have a certain time (i.e. 30-60 days) in which to indicate that they are now willing to cooperate with voluntary relocation and choose a relocation site, house plan, and contractor. If they do not do so within that specified period of time, the Office would proceed to select a site and construct the home for such individuals. These homes would be located on the New Lands, most likely in a rural community setting;

- Notify non-HPL residents that they had a certain time (i.e. 30-60 days) during which to choose a relocation site, house plan and contractor. Individuals in this category who failed to proceed with the necessary elements of their relocation, would be paid an amount equal to their housing replacement benefit. Individuals in this category would not receive moving expenses, infrastructure costs, or a moving bonus as the bonus specifically states it is for relocating;

- The Office would continue to perform its normal post-move counseling function for all of the individuals who had relocated during the last two years of actual physical relocation. This consists of ongoing counseling, home warranty, etc. and is a service that was extended to all previous relocatees; and

- During this final two-year period, the Office would also prepare for conducting its final RIF, seek placement for employees still remaining, deal with early retirement incentives for those choosing not to continue their Federal career, and perform all of the other records retention, and administrative shutdown activities necessary.

2-6: BUDGETARY PROJECTION

There is little need for narrative in this section as the enclosed table of budget projections (Table 1) clearly delineates the Office's plan for staff and administrative cost reduction through the end of the phase out period. There are a few issues that require noting or clarifying however, in order for the reader to fully understand the enclosed budget projection table.

The plan proposed by the Office for completion of relocation and phase-out can be accomplished within historical budgetary authorities. No increase in the amount of total annual funding will be necessary in order to accomplish the changes to the program outlined in the plan. In fact, the budget projections reflect decreasing administrative costs and total program costs beginning with fiscal year 1997. The budget projection begins with fiscal year 1992, as that is the year in which the number of relocations accomplished began to decrease from an Office high of 205 in one year. The Office is already at an actual employment level, as of fiscal year 1994, of ninety-one. This is six positions below the authorized FTE ceiling and is a result of the fact that the Office has been under a self-imposed hiring freeze since fiscal year 1992. The presentation begins with fiscal year 1992 in order that prior years of reduction in output of workload factors can be compared to prior year reductions in staffing. It would be inappropriate to disregard the approximately 10 percent staffing reduction which has already been accomplished as the number of relocations have decreased. The Office proposes to accomplish a reduction of almost 25 percent of staff by fiscal year 1998, and subsequently, staff will be reduced another 20 percent by the end of the program. Since the Office is very small to begin with and because there is such a wide diversity of specialities required to meet our statutory responsibilities, it is felt that the FTE projected in 2003 is the absolute minimum with which the agency could function prior to being completely phased out.

The projections do not include the cost of incentive relocations for non-eligible extended family members of HPL residents. However, this figure should not exceed $10,000,000 and can be partially absorbed within the existing budget should Congress decide to grant this authority.

TABLE 1
BUDGET & STAFFING PROJECTIONS

	APPROPRIATED			PROJECTED								
	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003
FTE Ceiling	97	97	97	93	92	90	79	75	58	56	55	54
Families Moved	205	130	106	150	100	100	100	100	100	100	100	100
(In Thousands of Dollars)												
OPERATIONS	4,800	5,000[1]	6,730[1]	6,524	6,470	6,567	6,208	6,134	4,684	4,695	4,666	4,580
LAND & STRUCTURES:												
Housing	9,358	8,419	9,850	8,150[2]	8,500	8,500	8,500	8,500	8,500	8,500	8,500	8,500
Roads, Archy	6,984	8,344	7,450	7,850	9,025	3,500	1,750	1,750	1,750	1,750	1,750	1,750
NPL/HPL Development						5,300	6,250	6,250	6,250	5,000	5,000	5,000
BONUSES	1,400	1,400	---[3]	---	---	---	100	400	300	195	---	---
DISCRETIONARY	3,300	4,535	2,906	2,364[4]	2,350[4]	2,415	3,212	2,548	2,338	2,160	2,050	1,941
TOTAL BUDGET	25,842	27,698	26,936	24,888	26,345	26,282	26,020	25,582	23,822	22,300	21,966	21,771

Note: Inflation is not considered in these figures.

[1] An additional $1,400,000 in 1993 & $1,200,000 in 1994 were BIA funds (PL100-666) used to fund the Range project. After 1994, Range costs are included in the ONHIR Operations budget

[2] In 1995, there is a carryover of $10,196,000. Of this amount, $4,600,000 will be used for housing, and $5,000,000 for IHS projects

[3] We have bonus carryover money of $1,806,000, which should all be used up by FY1998

[4] If authority is granted, the Office plans to use $2,000,000 in 1995, and $3,000,000 in 1996 out of Discretionary Funds carryover for NPL/HPL development

TABLE 1
BUDGET & STAFFING PROJECTIONS

2-7: PERSONNEL ISSUES IN PHASE-OUT PLANNING

ONHIR is committed to achieving a substantial reduction of administrative costs and staffing associated with the relocation program. To be effective, staff reductions must be structured in such a way as to strive for minimal disruption of relocation processes and guarantee employees' due process and placement rights. A variety of issues and concerns must be addressed, and a number of options will be explored to minimize disruption of critical services to relocation clients, and adverse impact to staff. Staffing allocations authorized by the Office of Management and Budget reached a high of 97.0 in 1992. This is the base figure used to predicate future reduced allocations by OMB, and is the base from which this agency has already realized reductions.

Staffing Levels - Current and Proposed

Staffing levels are dependent on the workload of the organization, which is in large part based on the number of families awaiting relocation. This number will continue to decline, notwithstanding successful appeals from denial of relocation benefits, and reversal decisions stemming from litigation. Also affecting workload are developments on the New Lands. A reasonable assumption can be made that construction and maintenance work will reduce in future years, and some reduction in staff may be made from this component.

As of January 1995, the total number of positions filled is 91 (the Commissioner position was vacated in April 1994, and no successor has been appointed). For the past three years, the Office has operated under a self-imposed hiring freeze, and will continue this freeze in the future. With normal attrition, reduction in workload resulting in a reduction-in-force (RIF), the possibility of staff taking advantage of a voluntary separation incentive, retirements, and completion of some developmental activities, it is reasonable to anticipate further reductions in staffing of as much as 40 percent by the year 2000.

Additional reductions in years beyond 2000 will be accomplished through attrition and outplacement within a successor agency. There may be a need for an additional RIF in approximately 2002 or 2003, depending on the rate at which the number of clients eligible for benefits declines, and the rate at which staff is placed in other bureaus or retires.

Reduction-in-Force (RIF) Considerations

Between 1995 and late 1997, approximately 18 positions will be eliminated, many of which are located in the range maintenance and construction function. Of these, only three are eligible for discontinued service or optional retirement. The remainder of staff in that function would be separated from the federal service unless placement efforts are successful. An additional eight members of staff not in the range program are eligible for discontinued service, and four more for optional retirement, by this date. It is reasonable to assume that some may avail themselves of an opportunity to obtain a voluntary separation incentive payment, and/or enhanced annuity computations if such are available and/or if their positions are affected by those in the range program exercising bump/retreat rights.

It is expected there will be some disruption of program activities because of the need to conduct a RIF under the provisions of Title 5, Code of Federal Regulations, Part 351. It is important that the number of times a RIF is conducted be held to a minimum because of the disruption of the program. As a result of the complexity of the regulations governing RIF processes, there will be a lengthy planning process to determine the structure of the organization, total number of employees remaining after the RIF, and the types of positions which will remain. As the scope of the RIF is determined, the number of staff affected will change and significant disruption can be expected. It is conceivable, and even probable, that not all those whose positions are affected and who are eligible for discontinued service retirement, will avail themselves of the opportunity to leave the federal service. It is likely that at least some will exercise their bump and retreat rights under RIF, and some staff in critical functions may be displaced, resulting in a further disruption of the program. In addition, it must be assumed that some employees will appeal the RIF to the Merit Systems Protection Board (MSPB), which will require significant amounts of support staff time to respond and which will further affect daily operations of the Office.

To be equitable, a number of options need to be explored to minimize adverse impact on staff, which in turn lessens adverse impact on program operations, and may reduce the amount of appeal activity to the MSPB. Among these options are:

- Priority placement consideration in other agencies in the federal sector. Priority placement can be linked to a reduction as a result of a formal transfer of function accomplished through legislative action.

Under this scenario, employees of the Office would be considered as status employees of the gaining successor agency. An additional option is to negotiate placement possibilities with other federal agencies, such as Bureau of Indian Affairs, Bureau of Land Management, etc. It is not likely that the latter would enjoy a great deal of success, given that many agencies are in the process of down-sizing. Such placement efforts stand a better chance of success if the placement gave to the gaining bureau both the FTE allocation and funding for the employee's position at the time of transfer;

- Retraining staff to make career changes. This is an option already available to agencies at such time as positions are identified to be affected under RIF. The agency is ready to make an intensive effort to cross-train, retrain or arrange for detail of staff to prepare for transfer to other federal agencies. The process will require careful consideration of anticipated skills needs in selected career paths, which will require additional staff time to analyze and project. Such retraining, cross-training or detail assignments will also take effort away from the relocation process;

- Affirmative placement efforts in Tribal, State or municipal entities. Similar to number 2 above, with the possibility of detail assignments for staff under authority of the Intergovernmental Personnel Act (IPA). One factor working against successful use of the IPA is the limited potential for placement of current staff under a Tribal, State or municipal system which is separate from current retirement systems, and the loss or perception of loss of benefits. This may work to dissuade employees from actively seeking such placement.

Enhance Retirement and/or Voluntary Separation Opportunities

In addition to placement efforts, retirement opportunities may be sufficiently attractive to realize a reduction in staffing if (1) an early retirement authority is granted/extended for the next two or more years, and (2) the manner of computing annuities for Office employees is changed.

The agency was successful in obtaining early retirement authority from the Office of Personnel Management (OPM) for a one-year period ending September, 1995, and will request an extension of this authority to September, 1996. To date, no staff have taken advantage of the opportunity, even though the voluntary separation incentive payment (buy-out) was made available agency-wide in conjunction with the early retirement authority. It is believed the reluctance of staff to take advantage of this opportunity was based on (a) lack of eligibility for annuity under OPM's retirement regulations, and/or (b) substantial reductions in annuity based on age under 55 years at time of retirement.

At the time the predecessor agency (the Commission) was established, relocation was envisioned as a reactively short-term program. Many staff joined the agency during the early years, and now have a substantial investment in the federal system, both in terms of career and retirement eligibility. The Congress realized that the nature of the program had changed substantially, and in 1990 extended the full protection and benefits of competitive civil service status to all staff of the Office (P.L. 102-180, December 2, 1990). At present, staff have invested much of their working lives in the Office, and if subjected to a RIF, will be left literally without means to continue their federal careers. This comes at a time when staff are beyond their optimum age to start a new career and the protections of competitive civil service status become nominal.

One method to overcome the reluctance of staff to leave would be to increase the percentage of high-three average salary used in the annuity computation formula, for all service with the Office past a certain date. The Office suggests the current retirement annuity computation formula for those employees under the Civil Service Retirement System be modified to provide for a final step of computing 2.5 percent rather than 2 percent of the high-three average salary, and extending this percentage to cover all retirement system covered service with this Office after 1985. The advantage is that this increase will work to off-set annuity reductions for those under age 55, but still eligible for early retirement, which in turn reduces the need for formal RIF activity and the attendant disruption of relocation programs. A change would need to be made in the annuity formula of the Federal Employees Retirement System (FERS) for employees of the Office, to provide a comparable enhanced retirement benefit for those under this system. There is precedent for instituting such a change in annuity computation, as was provided for certain employees of the Indian Health Service and Bureau of Indian Affairs by P.L. 96-135 (December 5, 1979).

Another option for consideration is to provide a voluntary separation incentive payment (VSIP or buyout) similar to that provided by the Federal Workforce Restructuring Act of 1994 (P.L. 103-226). Based on interviews with staff, the reason that so few came forward expressing interest in the VSIP was because of the "either/or" provision of determining the payment amount. The buyout cap was an amount equal to severance pay entitlement, but not to exceed $25,000.00. Many of our staff had sufficient years of service (more than 10) to feel a significant investment in the retirement/benefits of the system, which they believed was not adequately off-set by the relatively low level of buyout provided by the formula; i.e., 10+ weeks' pay equivalent with no annuity eligibility wasn't sufficient enticement for voluntary separation, especially when this same amount would be available to them under a RIF at some unspecified future year.

Using a specific dollar amount rather than an amount constructed under the severance pay formula, and with such amount sufficient to induce staff to take voluntary separation, the need for some RIF activities may be lessened. The staggered dates of eligibility for retirement would tend to avoid a disruption in work caused by a mass exodus of staff from any one function. Any option affecting total creditable service, voluntary separation incentive, or altering the annuity computation formula would require legislative action to implement, since it involves a departure from current regulations.

By the year 2000, additional members of staff will be eligible for discontinued service or optional retirement. If the agency is successful in encouraging staff to take advantage of retirement opportunities, significant reductions in staffing may be realized with minimal program disruption. However, if no early retirement authority and/or voluntary separation incentive is provided, a second RIF may need to be conducted. This could result in program disruption, and the conclusion of the relocation process could be further delayed.

Assuming the Office can realize a reduction of 45 percent by the end of the program, a transfer of function to a successor agency would result in placement of a maximum of 54 employees. Given the nature of the program and the history of the organization, a transfer of function most logically would place the office as an independent entity in the Office of the Secretary of the Interior. As such, the Office could continue to function with independent budget authority (as the Congress intended by the manner in which the original agency was established). As the program continued to reduce in activity, employees would logically exercise placement eligibility - departmentwide. Mobility restrictions and personal preference would limit the number of transfers actually

accomplished, and it is reasonable to assume that no more than half of those eligible would actually be placed within the Department.

2-8: SUMMARY OF LEGISLATIVE AND REGULATORY CHANGES NEEDED

This final section of the plan provides a brief summary of the legislative and regulatory changes which would be needed to accomplish all of the elements of the plan.

- 25 U.S.C. 640d-14, (P.L. 93-531 Sec. 15) needs to be amended to provide the Office discretionary authority for incentive eligibilities to Navajos on the HPL;

- 25 U.S.C. 640-9, (P.L. 93-531 Sec. 10) needs to be amended to provide the Office authority to develop infrastructure such as water, power, roads, range improvements, housing, health facilities and such other facilities to be determined by the Office on the Hopi Partitioned Lands and the Navajo Partitioned Lands and the former Bennett Freeze area;

- 25 U.S.C. 640d-11, (P.L. 93-531 Sec. 12) needs to be amended to transfer the organization, staff, budget and functions of the Office to the Office of the Secretary of the Interior,

- 25 U.S.C. 640d-11 (P.L. 93-531 Sec. 12) needs to be amended to provide a different method of computing retirement annuities for ONHIR staff than that which is at 5 U.S.C. Sec. 8339

- 25 U.S.C. 640d-24, (P.L. 93-531 Sec. 25) needs to be amended to extend authorization for appropriations for the Office until the year 2000 and thereafter to transfer such authority to the Secretary of the Interior;

- 25 U.S.C. 640d-13, (P.L. 93-531 Sec 14) needs to be amended to provide a definitive deadline for voluntary relocation beyond which the

program would become involuntary and enforcement action would be taken;

- 25 U.S.C. 640-d-10(h), (P.L. 93-531 Sec. 11) needs to be amended to authorize the Office to grant homesite leases on the New Lands to individuals who are ineligible to receive relocation assistance but are extended family members of New Lands residents and affected by relocation; and

- 25 U.S.C. 640d-26, (P.L. 93-531 Sec. 28(a)) needs to be amended to provide that the ONHIR's development activities are exempt from PL 101-601, the Native American Grave Protection and Repatriation Act, PL 89-665, the National Historic Preservation Act, as amended, and PL 96-95, the Archaeological Resources Protection Act of 1979.

- 25 CFR, Part 700, (the Office's regulations) need to be amended to establish a new date for close of receipt of applications for New Lands grazing permits. After such date, certain persons listed as eligible to receive grazing permits would lose their priority and the Office could issue discretionary New Lands grazing permits.

UNITED STATES GOVERNMENT
OFFICE OF NAVAJO AND HOPI INDIAN RELOCATION

Carl J. Kunasek
Commissioner

Christopher J. Bavasi
Executive Director

May 25, 1995

The Honorable John McCain, Chairman
Senate Select Committee of Indian Affairs
SH-838 Hart Senate Office Building
Washington, D.C. 20510-6450

Dear Chairman McCain:

Thank you very much for the opportunity to comment on the Navajo Nation's "Reform Plan" submitted to your Committee on March 28, 1995. I apologize for taking almost two months to respond with the Office's comments. However, the Office takes this issue very seriously and a considerable amount of time was required to compile the data reflected in our response and in the various attachments.

The Navajo Nation, in a variety of letters and documents during the last two months, has spoken extensively about its perspective on the efforts of the Office of Relocation since its inception. These documents include; a letter to the Chairman of the House Appropriations Subcommittee, Interior and Related Agencies, prior to our February 28, 1995 hearing, a letter to the President of the United States dated February 28, 1995, the statement of the President of the Navajo Nation before the Senate Committee on Indian Affairs on March 15, 1995, and finally the Reform Plan submitted to the Committee on Indian Affairs on March 28, 1995. These various documents contain numerous erroneous statements as well as implied assumptions about the mission of the Relocation Office as mandated by its enabling legislation, which are also incorrect. Therefore, before commenting on the Reform Plan itself, it is essential that I correct these erroneous statements and incorrectly implied assumptions so that any comments I make can be viewed from the perspective of accurate historical information regarding the activities of the Office of Navajo and Hopi Indian Relocation.

For the purpose of correcting the record in this matter, I will simply state the erroneous assertion or implied assumption and follow with a paragraph that reflects accurate information on the issue at question.

The Navajo Nation has asserted that "the Navajo Nation...made repeated requests to be consulted in the development of this plan. These requests were denied and no consultation took place."

This is in reference to the report submitted to the House Appropriations Subcommittee on February 28th. This report was requested by the Committee in last year's appropriations language and was to address a plan for relocation completion and agency phase-out. On November 9, 1994, the Office sent a letter to Mr. Roman Bitsuie, Director of the Navajo-Hopi Land Commission Office of the Navajo Nation, informing him of the impending Plan Update and Report to Congress

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and inviting the participation of his office. No reply of any kind was ever received to this letter. Further, no request from any branch of the Navajo Nation government was ever received by the Office of Navajo and Hopi Indian Relocation requesting participation in the Plan Update. Finally, on February 28, 1995, the date the Relocation Completion and Phase-Out Plan was submitted to the Chairman of the House Interior Appropriations Subcommittee, copies were sent to both the Hopi Tribal Chairman and the Navajo Nation President indicating that this document had been submitted on that date, as required by the Committee, and that we welcomed any comment and input they might have on the document. Clearly, this is not an implementation plan and legislation would be required to alter the current authorities of the Office of Navajo and Hopi Indian Relocation and all parties would have ample time for input during that process.

The Navajo Nation has asserted that "there are more than a thousand families homeless as a direct result of the relocation program. Even on the 'New Lands', the relocation program's model project, the Relocation Office's own surveys found a rate of homelessness of 38.6%."

The issue of "more than a thousand families homeless" is perplexing. The letter does not give any indication of data on which this figure is based nor does it indicate whether these are families who previously relocated, are eligible for benefits and have not relocated, or a combination of the two. If by "homeless" the letter means individuals who do not own a home of their own, this may be an accurate figure. However, if the normal definition of the word is intended (i.e. individuals living without benefit of any shelter), the Office flatly disputes this number. Our counseling staff are in regular contact with all individuals who have been certified for benefits and not yet relocated, as well as individuals who have relocated within the last two years. Of the approximately 700 individuals who have left the HPL but not yet received their benefits, the vast majority are living with other family members off of the HPL. The Office has repeatedly conducted data gathering surveys on all elements affecting the relocatee population and has no indication that our population has any higher percentage of the true "homelessness" than would be true of the remainder of the Navajo Nation population. As to the assertion that there is 38.6% homelessness on the New Lands, we are totally baffled. Every individual who has moved to the New Lands has received a home. The Office can find no reference in any of its surveys to a rate of homelessness on the New Lands, let alone a 38.6% rate.

The Navajo Nation has asserted "the Relocation Office, which is not required to adhere to Federal housing construction standards, has built hundred of units of defective housing throughout the Navajo Reservation."

The Relocation Office not only adheres to the International Conference of Building Officials' Codes, but has many standards which are more stringent than the IC80. Additionally, the Office has a staff of field building inspectors and conducts an average of seven inspections during the process of construction of a new home. Nationwide, the average municipality inspects three to four times during the course of construction.

The Navajo Housing Authority, the tribal branch of the Housing and Urban Development program, follows HUD standards. These standards have not been revised since 1981. Navajo Housing Services, the tribal residential construction

arm, has no written building standards and no field inspectors. During the very early days of the relocation program, before the Office determined that it would be necessary to have our own inspection program, there were approximately 100 homes constructed that were seriously substandard. The Office undertook a major repair program in 1985 and either repaired or replaced all of the units in this category. In addition to the inspection program, that was implemented in response to the early problems encountered in the program mentioned above, the Office also has a two year warranty period on relocation homes. During that period of time, the contractor is obligated to make repairs on any latent or patent defects. In actuality, the Office has responded to requests for repairs beyond the two year program and has a policy of inspecting any home that the occupant alleges has defects. While many of the repairs that the Office makes could be considered homeowner maintenance, we continue to provide these repairs as much as ten years after the fact because of the nature of the program and the desire of the Office to reassure those who have yet to relocate that our housing program is an excellent one.

Parenthetically, it should be noted that several different tribal offices, as well as chapters, have requested that the ONHIR contract for and oversee, on their behalf, the construction of facilities such as senior centers, Head Start buildings, and other community structures, both on the New Lands and on the existing reservation. I am somewhat perplexed as to why these entities would request the Office to perform these services rather than the tribal construction services, if indeed, our product is so inferior.

The Navajo Nation has asserted "the Relocation Office does not provide follow-up services for relocatees after two years. Further, the Relocation Office does not have any process for evaluating the long-term effects of its program. The Relocation Office cannot tell you where most of the 2,500 Navajo relocatee families are living or under what conditions."

The Relocation Office does specify a formal two year post-move counseling period. During that time, the relocatees are regularly contacted by the Counseling Branch to determine if they are encountering any problems or need any assistance or information. While the formal period of post-move counseling is for two years, in reality, the Office responds to inquiries, requests for assistance, information, etc. from any relocatee who contacts the Office. It is totally inaccurate to say that the Office does not perform any follow-up services for relocatees beyond the two year period. We have never refused to attempt to assist any relocatee no matter how long it has been since they relocated, if they contact our office for assistance.

While the Office is not charged with evaluating the long-term effects of relocation, we have in fact, contracted for a myriad of studies on a whole variety of issues affecting the relocatee population. The Office has authored many research documents through direct office staff participation, it has contracted for a wide variety of studies, and it has cooperated with a variety of research projects performed by a host of outside observers. Attachment A is a partial listing of the reports that have been prepared regarding the various aspects of relocation and their impacts on the relocatee population.

The Navajo Nation has asserted that "the Navajo Nation finds out about these families in crisis only when individual families come to us for assistance. We know only that hundred of families have lost their homes and are receiving public assistance, either from the State of Arizona or the Navajo Nation."

I must assume that the Nation is referring here to families who contact the Navajo-Hopi Land Commission Office for financial assistance in a variety of economic crises. The families are directed by the Office, during their relocation process, to contact the NHLC office because we have had an agreement with them for years under which we provide an annual grant of funds which allows their Office to address such things as delinquent utility bills, delinquent taxes, and other items which are causing relocated families to be in a crisis situation. As indicated above, our clients have no reluctance in contacting our office directly, no matter how long it has been since they relocated, if their crisis or problem is of a nature other than financial.

The assertion regarding the loss of homes is not a new one. The Office previously conducted an extensive examination of County Recorder documents to determine what had happened to individuals who had relocated prior to that time. The report concluded that a vast majority of individuals who no longer owned their homes had sold them for varying degrees of profit and had moved elsewhere. The Office found almost no evidence of homes which were actually lost by the client as a result of tax or collateral foreclosures.

It is undoubtedly true that a great many of our clients are receiving public assistance. A sampling of the agency's client records by our Counseling Branch, reveals that most of our clients are already receiving some sort of public assistance prior to their relocation. In addition to the relocation bonus (usually $5,000) the Office has for many years encouraged contractors to employ clients in the construction of their replacement homes.

Further, the Office has within its limited funding capability, provided training programs and secured job placement services for our clients which we feel exceed opportunities provided to many non-relocatees.

There is implied in this statement by the Navajo Nation, an all encompassing ongoing responsibility on the part of the Office of Navajo and Hopi Indian Relocation to provide the full range of economic and social services which are already funded by the federal government for non-Indian specific programs and by the Bureau of Indian Affairs to the Navajo Nation for Native American specific programs. This has been a long-standing assertion by the Navajo Nation which is not supported by a reading of the legislation. The Office's function is to provide relocation assistance in a thorough and generous program, but the Office is not, in any way, authorized to supplant the existing social services functions of both the Navajo Nation and all of the various federal, state and county programs.

As I have already stated most of the Office's clients are already receiving some sort of public assistance prior to their relocation. The Office believes that a comparison of the economic condition of relocatees to the economic condition of the average Navajo non-relocatee would reflect that our clients are no worse off and in all likelihood, are better off by such measurements as net worth,

annual income, etc. This assertion notwithstanding, however, it must be pointed out that there is no indication in the organic Relocation Act or any of its subsequent amendments which would lead any reader to believe that this program was intended to supplant the myriad programs for public assistance from the Navajo Nation or any other municipality within which a relocatee resides. The Nation has implied that the Office was intended to supplant these many services throughout the history of the program and this assumption simply is not valid from any reading of the legislation.

Finally, it is interesting to note that in the Navajo Nation's letter to President Clinton of February 28, 1995, the following quotation appears:

> "According to the United States 1990 census, the Navajo people are the most poverty stricken group of people in the United States. Indians are the poorest ethnic group in the United States and Navajos are the poorest Indians. 48.8 percent of our people live in poverty. Per capita income is $4,788, median family income, $13,940. Thousands of Navajo families are homeless. Almost everyone relies on government services to survive. (Emphasis added)."

The Navajo Nation has asserted that "the relocation program's Relocation Completion and Phase Out Plan passes all the program's accumulated liabilities onto the Navajo Nation. The Navajo Nation will not and cannot accept these liabilities which were created by the federal relocation effort. The Nation simply does not have the resources to address these liabilities."

This assertion too, has been a common theme in recent years. The Office fails to see any supporting evidence that there have been any monetary liabilities which would be thrust upon the Navajo Nation as a result of the relocation effort. In point of fact, the opposite is true. Over the life of the relocation program, millions of dollars have been spent on a wide range of infrastructure improvements, both on the existing reservation and on the New Lands. Additionally, there have been expenditures on a wide range of capital improvement projects such as senior centers, Head Start centers, community health centers, etc. on both the existing reservation and on the New Lands.

Attachment B provides line item expenditures for these various projects. However, I would like to summarize them here for the record. On the existing reservation, the Office of Navajo and Hopi Indian Relocation has expended $9,800,000 on water projects, $2,700,000 on roads, almost $1,000,000 on electricity extensions, and over $2,100,000 on miscellaneous projects. This is a total of over $16,000,000 which has been spent on the existing reservation for infrastructure and human services projects beyond the actual program dollars which have gone to the individual relocatees home construction cost. On the New Lands, the Office has expended over $10,000,000 to date on water projects with another $5,000,000 currently budgeted for completion of these projects on the New Lands, $33,000,000 on road projects, $1,200,000 on electrical projects, slightly in excess of $3,000,000 on community development and over $12,300,000 on miscellaneous other projects such as construction of chapter facilities and office buildings, cadastral surveys of the New Lands boundaries, provision of grants for various training projects and social services. This totals slightly

in excess of $66,000,000 which has been spent on the New Lands for expenditures other than direct costs associated with provision of relocation housing. Therefore, out of a total cost of the program to date of approximately $335,000,000, over $82,000,000 has been spent on a variety of projects which have vastly improved those areas impacted by relocation. This is clearly contrary to the implication that tremendous liabilities have been created.

The Navajo Nation has asserted that "the present political climate may not allow the nomination of a Commissioner for the Office of Navajo-Hopi Indian Relocation who will reform the relocation program. Additionally, it appears the administrative staff of the Relocation Office has no interest in reform."

The Office has been responsive to suggestions from the Navajo Tribe for changes in its programs or reforms whenever they could be implemented within the constraints of the authorizing legislation. Also, the Office has been involved during the last three years in extensive re-evaluation and assessment of our program.

Finally, the various documents referred to at the beginning of this letter have implied in a variety of ways that the Office of Navajo and Hopi Indian Relocation and its predecessor organization, the Navajo and Hopi Indian Relocation Commission, have been poorly managed and in almost every method of measurement have failed to perform their statutory responsibilities in an adequate manner. In point of fact, the Office has been subjected to a vast number of audits and investigations over the years and none of these audits or investigations have alleged any wrongdoing, malfeasance, or misfeasance on the part of the Office. The most recent such report was completed by the GAO on April 27th of this year. A copy of that report is included as Attachment C.

If any general theme is to be infered from the results of these many audits and investigations, it is that the Office has carried out its responsibilities in an extremely emotional environment, dealing with a highly volatile issue in a manner with which no major fault could be found. It could be argued, the largest single impediment to the speedy completion of the relocation process has been the Navajo Nation's consistent opposition to the program. Had the Navajo Nation seen fit to support the law from the outset, the course of the relocation effort would have gone a great deal differently. At this juncture, after twenty years of opposition to the program for the Navajo Nation to assert that any deficiencies in the program are the fault of the United States Government or the administrative agency charged with carrying out the law, is misleading. The Navajo Nation's consistent position on the Relocation Act has been one of opposition. They have historically sought repeal of the Act itself, and failing that, have followed a strategy of delay both through litigation and a concerted effort to arouse opposition through the media. All of their efforts over the years have been directed towards delaying and prolonging the program, gaining additional benefits and concessions from the government and consistently criticizing the manner in which the program has been carried out, rather than attempting to positively affect the outcome of relocation. This latest proposal seeks, in the judgement of the Office, to continue this strategy. The "Reform Plan" calls for additional studies and continues to imply, in the absence of any real facts or documentation, that the government has created tremendous liabilities for the Navajo Nation through its relocation program. There is in

actuality, very little of a specific nature contained in the Reform Plan to comment on. I will, however, attempt to go over the elements of the "Reform Plan" one by one and offer the Office's comments on them.

First, I would like to comment on the six elements of the Relocation Evaluation and Assessment Project (REAP).

1. There is no indication as to what the intended use for or outcome of a 100 percent survey of all relocatees would be. We can already tell you who they are. To a large extent, we can tell you where they are now. Beyond the two year post-move follow-up period, the Office does not actively seek to maintain contact with relocatees. However, as noted earlier when relocatees do contact the Office following the two year follow-up, their new addresses are noted. It is totally unclear to the Office what the purpose of locating and identifying the children and grandchildren of relocatees would be. Once again, there is an implied responsibility of the program which is not in accord with the original legislation (i.e., the Relocation Act is intended to care for the children and successive generations of relocatees in perpetuity).

2. The Office already has records on those who have been denied benefits. However, we have clearly not kept in contact with these individuals as there is no legislative authority or responsibility for them. The Nation's comment regarding the fact that identification of reasons for denials would result from this survey is baffling to the Office. We know exactly the reasons for denial of eligibility and we know the basis for our eligibility requirements. These issues have been tested in the courts and the basic tenants of the two requirements for eligibility have been upheld. Once again, the Office does not see what benefit is to be derived from this segment of the survey in terms of completing relocation. The Nation has consistently held that relocation should not take place while simultaneously supporting a legal office which makes every effort to establish eligibility for as many people as possible.

3. The survey for dependence on public assistance and economic status, etc. would be a valid one, if the legislative authority for the Office of Relocation was extended to long-term economic development, public assistance, and employment training. While the Office has taken it upon itself to conduct activities in all of these areas, there is no ongoing specific legislative responsibility for this Office to supplant the already existing programs in these areas. The Office does agree that for any such survey to be meaningful that there would have to be a control group. While the Reform Plan's comment on this factor is very terse, the Office would assert that the control group should be the remainder of the non-relocatee Navajo population. As stated earlier in this letter, the Office believes there is no higher level of public assistance dependency and no worse economic and employment status among relocatees, than exists among non-relocatee Navajos.

4. The survey and inspection of relocation housing is redundant and unnecessary. Our clients have had no reluctance over the years, especially in light of the assistance they received from the Office of

Navajo and Hopi Legal Services Program, to notify us of any deficiencies in their homes. As noted earlier in this letter, the Office did have approximately 100 homes early in its program which were substandard, all of which have been either thoroughly renovated or replaced. The Office has been extremely liberal and generous in continuing to perform repairs on homes which are far beyond the two-year warranty period and have even repaired defects which might be considered homeowner maintenance. Once again, there is an assertion that the Office has not responsibly discharged its duties in this area, however, a factual review would clearly demonstrate that this is not true. In point of fact, the Navajo Tribal Housing office is currently in the process of renovating and repairing over 600 homes at a cost of approximately $27,000,000 and has forecasted 540 additional homes at a cost of over $25,000,000 for the next round of repairs. Therefore, to assert that just because some homes built by the Office of Navajo and Hopi Indian Relocation have required repairs they are substandard or inferior seems somewhat hypocritical.

5. The Office maintains demographics by geographic area and family size and has supplied this data to institutions such as school systems and health service providers. Whether or not individuals are still residing in their relocation homes would of course have an impact on the accuracy of this agency's numbers. However, the responsibility of the government in this issue is sufficiently discharged by a review of the statistics regarding population changes in the areas where individuals actually obtained their relocation home. The Office and the Federal Government do not continue to be responsible in perpetuity for the impact on a geographic area when a relocation family moves to another home subsequent to their relocation home.

6. The Office has maintained data on community impacts. We have commissioned studies on items such as resources including firewood, water and grazing, etc. Within the guidelines of the current legislative authority all of the issues in Items I through 6 have been researched and documented.

Our responses to the six elements of the survey should not be construed as an assertion that there are no needs which remain unmet on the Navajo reservation, and/or in non-reservation host communities. In point of fact, the Office has acknowledged that the disputed area has been denied its normal share of improvement dollars over the years because both Tribes were reluctant to invest their limited funding in areas which were still in dispute as to ownership. The Office's Relocation Completion and Phase-Out Plan, as submitted to the House Appropriations Subcommittee, included a date for completion of relocation and phase-out of the Office which was mandated by the Committee. In my statement to that Committee, I pointed out that the Office does have an alternative which does not meet that timeframe and we would be glad to discuss its elements. At various junctures throughout the last fifteen years of history of the relocation effort, the concept of making the Relocation Office a redevelopment agency has surfaced. A bill to accomplish this change in the agency structure was actually introduced in the Senate. The Office has acknowledged that there is a great need on both the Hopi and Navajo reservations for infrastructure improvement. This is even more true on the HPL and the NPL. However, the vast majority of these needs are not a result of the Relocation Act itself and should Congress determine that the

Office is the appropriate arm to address these accumulated deficiencies, it should not be construed that these deficiencies exist as a result of the relocation program.

Section B, regarding planning assistance, falls within the same comment area as the six elements of the REAP. These are items which are beyond the current legislative scope of the relocation effort, but which the Office agrees would probably be advisable. The Office itself however, can historically demonstrate that it is more than competent to perform such evaluations and offer such assistance to host communities should Congress determine that they wish to add such a function to the authority of the Office.

Section C, regarding Congressional oversight hearings, the Office not only concurs that there should be hearings, but assumed that when it submitted the Relocation Completion and Phase-Out Plan, such hearings would take place prior to the passage of any comprehensive amendment to the Relocation Act.

The Office would point out that there would be at least two potentially problematic issues within the Nation's proposed organizational and timeframe structure. First, it should be noted that if the Navajo Nation itself is funded to accomplish the procurement of these studies, that Navajo preference is required by Navajo Nation law for any contracts that are let through their procurement process. That is to say, that the Navajo Nation's own contractual law and regulations would limit the participants in any such studies to consultants who are Navajo and that a wide range of experienced and competent consultants would be eliminated from consideration for any such consulting contracts.

Secondly, this approach would probably be unacceptable to the Hopi Tribe as it would, in effect, place the Navajo Nation in a position to control the relocation effort.

As to the final recommendation contained in the Reform Plan, the Office believes that the assignment of a senior staff person to serve as a liaison between the Navajo Nation and ONHIR, could be very positive. Since the Committee indicated at the recent reauthorization hearing, that it is extremely interested in the progress of relocation completion and Office phase-out, it appears very appropriate to ONHIR that such a position would be appointed. However, it would seem most efficient to assign this role to an existing member of the Committee staff.

In summation, Mr. Chairman, as I noted at the beginning of the section of this letter which dealt directly with the Nation's Reform Plan, there was very little of a substantive nature to comment on. We have made a good faith effort to discuss the elements contained in the Reform Plan, although it is bereft of any detail or objective. I would say in closing, that the Office's own Relocation Completion and Phase-Out Plan has a great deal more detail and certainly deals with substantive issues in a much more direct manner. The Office never anticipated that the elements of our Plan would be accepted without discussion and review by all affected parties and we welcome the opportunity for a productive discourse on the many issues contained in it. We have notified both Tribes that we are awaiting their comments on the Relocation Completion and

Phase-Out Plan which was sent to them on February 28, 1995 and to date we have received no response to our offer. We stand ready to work with officials of the Hopi Tribe, the Navajo Nation, the Senate Committee on Indian Affairs, the Arizona Delegation, or any other appropriate parties to structure a meaningful dialogue on the elements necessary to bring this program to a satisfactory end.

Once again, Mr. Chairman, thank you for the opportunity to comment on the Navajo Nation's Reform Plan. The resources of the Office of Navajo and Hopi Indian Relocation are at your disposal for any further provision of demographics, statistics, opinions, discourse, etc.

Best regards.

Sincerely,

Christopher J. Bavasi
Executive Director

CJB:MJM:ts

Ref: Attachment A
Attachment B
Attachment C

ATTACHMENT A

COMMISSION PLANS AND REPORTS

Monthly Program Update and Report, October 1977 - current.

Legislative History of the Navajo and Hopi Indian Relocation Commission, Volume 1, 1972 through Volume 11, 1982 (continued)/1985.

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Statistical Abstract: 1983-1984, June 1984.

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Selling Prices Found in the 1985 Study of Replacement Homes Sales, February 2, 1987.

Relocatees' Post-Move Experiences, May 8, 1987.

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Anonymous Question on the MPA Survey, August 31, 1987.

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Sources of Funds for Clients' Relocation Benefits, February 2, 1988.

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Bonuses and Replacement Home Acquisition Spending in Off-Reservation Communities, June 10, 1988.

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General Information and Program Status, November 5, 1988 update of report issued on August 5, 1988 and May 5, 1988 under the title "Background and Program Status".

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ATTACHMENT B

COSTS OF THE RANGE PROGRAM

Personnel, Benefits, Travel & Training	$4,556,341*
Vehicles, Maintenance, & Fuel	$ 449,516*
Fencing	$ 750,041
Wells, Water Tanks, & Pipe Projects	$1,333,552
Maintenance of Windmills	$ 558,979
EARC Contracts	$ 147,335
Other Contracts:	
BIA Rangelands Survey	$ 578,993
BIA Range Improvements	1,420,523
BIA Cattleguards	92,047
Corrals	50,824
Francis Day, Range Yard	7,809
Furnace	3,590
Video	26,236
Navajo Nation, Wood Inventory	52,644
Squeeze Chutes	12,926
Solar Pumps	16,187
Warehouse Building	32,909
TOTAL	$2,294,688
Equipment, other than automobiles:	
Well Service Vehicle	$ 42,714
	111,332
TOTAL	$ 154,046
All Other Purchases	$ 75,877
TOTAL RANGE COSTS	$10,320,375

*Includes solid waste personnel, vehicles and containers.

ATTACHMENT B

INFRASTRUCTURE ON THE NEW LANDS

Archaeology	$ 5,628,415
Water:	
IHS (Not including funds given to IHS directly by Congress)	$ 496,000
NTUA	86,211
USGS	115,800
Other Contractors	17,700
TOTAL	$ 715,711
Roads:	
BIA	$20,680,000
Paving Contractors	6,798,116
Major Subcontractors	3,385,035
Equipment	436,268
Bureau of Reclamation	426,325
CH2M Hill	465,770
Other Contractors	715,626
TOTAL	$32,907,140
Electricity:	
CDEC:	
Parker Draw & Silversmith	$ 1,042
Antelope Wells	29,556
East Mill	69,962
Flowing Wells	73,008
Rim	90,033
Rural Community	70,907
Silversmith	22,889
Hogan Well	137,200
Hard Scrabble	92,425
Blue Bird	83,715
Parker Draw	16,006
Middle Well	33,810
Antelope Well	25,410
Barth Lake	41,745
North Well	49,335
Industrial Building	21,273
3-Metal Building	10,730
Santa Fe Shop	8,055
Miscellaneous	19,815
US West	162,732
4 States Electric	82,133
TOTAL	$ 1,141,511
Community Development:	
CH2M Hill	$ 3,065,856

ATTACHMENT B

(INFRASTRUCTURE ON THE NEW LANDS, Page 2, cont.)

Other:	
Sanders Old High School	$ 565,574
USGS Little Puerco Radiation Study	2,132,900
BLM Cadastral Survey	3,580,000
New Lands Community Center	1,109,475
Industrial Building	1,899,745
3 Office Buildings	1,244,205
Painted Desert Inn Cleanup	403,521
Navajo Travel Center	350,000
Bus Shelters	7,886
Police Station Equipment	12,496
Rodeo Arena	356,947
Headstart Building	585,770
Juvenile Probation Officer	29,912
Pen Rob Landfill Costs	47,898
Other Contracts	45,192
TOTAL	$12,371,521
TOTAL NEW LANDS INFRASTRUCTURE OBLIGATIONS	$55,830,154

ATTACHMENT B

INFRASTRUCTURE ON THE RESERVATION (Other Than New Lands)

Archaeology:	
ONLA	$1,292,268
Navajo-Nation-various	1,866,822
BLM Cultural Resource Study	250,000
Various archaeology contractors	33,221
TOTAL	$3,442,311
Water	
IHS Projects:	
FY 83	$ 204,000
South Pinon	920,000
East Hardrock	684,000
Dinnebito	494,000
Low Mountain	1,306,000
Hardrock	485,715
Teesto-2 agreements	319,499
Tuba City-4 agreements	438,045
Redlake	26,244
Shonto	70,000
Cliff Springs	275,000
Spider Mound	1,000,000
A-38 Project	989,000
LeChee	145,000
NA 94-652 Project	1,098,000
Coalmine	164,000
Transfer Station	59,000
Jeddito	176,000
Hardrock	628,700
Low Mountain	250,000
	9,732,203
Various Contracts	32,382
TOTAL	$9,764,585
Roads:	
Tuba City Subdivision	$2,678,301
Electricity (exluding individual client infrastructure):	
NTUA Projects:	
FY 83 Grid Electric	$ 68,320
Toyei	56,590
Lower Greasewood	63,314
Greasewood	21,734
Tolani	43,373
Redlake	5,554
Jeddito	21,007
Forest Lake	5,488
Burnt Corn	16,783
Burnt Corn	69,121
Pinon	118,769

ATTACHMENT B

(INFRASTRUCTURE ON THE RESERVATION (Other Than New Lands), Pg 2, cont.)

Jeddito	36,563
Birdsprings	79,766
	606,383
Tuba City Electricity-Subdivision	170,982
TOTAL	$ 777,365

Other:

Payments to Navajo Tribe:	
FY 82 Coalmine Chapter Grant	$ 9,000
Travel	19,465
Turquoise Trail Grant	1,032
FY 83 Land Selection	54,325
Pinon Shopping Center	150,000
Hardrock Senior Citizen Center	150,000
Forest Lakes Senior Citizen Center	150,000
White Cone Senior Citizen Center	150,000
Pinon Project Planning Office	45,000
NHA - LeChee	400,011
- Tuba City	160,000
Emergency Assistance Grants	43,491
Mediation Grant	8,000
BIA - HPL Survey	316,217
NACA - Health Clinic	25,000
Community Development:	
CH2M Hill Engineering	398,319
David Sloan Architects	13,597
TOTAL	$2,093,457
TOTAL PAYMENTS EXCLUDING CLIENTS	$16,077,718

ATTACHMENT B

ONHIR CONTRIBUTION TO NTUA FOR POWER LINES

Chapter/Community	Amount of Funds	Miles	No.Families
Whippoorwill	$ 2,621.18	4.21	10
Jeddito (Line A)	117,747.15	4.67	13
Lower Greasewood	127,844.00	25.00	51
Tolani Lake-Phase IV	62,231.00	8.00	23
Whitecone-Phase III	152,203.37	5.86	26*
Forest Lake	31,075.00	9.78	24
Red Lake-SE	112,446.96	15.00	15*
Jeddito (Toyei-NW)	125,862.96	15.30	40
Whitecone-PhaseII	5,488.00	20.49	44
Pinon (Burnt Corn II)	83,977.00	10.90	98
Hardrock-Line A	714,015.00	8.06	24
Low Mountain-Phase V	65,043.85	4.66	27
Whippoorwill (E. & W.)	19,500.00	9.93	60
Shonto-Line F	20,329.76	1.44	07*
Whippoorwill (Phase IA)	15,787.94	1.00	07*
Whippoorwill (Phase IB)	17,920.28	1.00	07*
Pinon (Southwest)	129,620.00	45.23	97
Birdsprings (Phase I)	79,766.00	15.86	52
TOTAL CONTRIBUTION	**$1,883,479.45**	206.39	625
PENDING POWER LINE PROJECTS			
Tonalea (Group Move)	$ 187,825.57	9.38	15*
Tonalea-Coalmine Mesa	850,000.00	22.00	150
Plus proposed business sites and chapter facilities			
PROPOSED POWER LINE PROJECTS			
Dilkon	$ 72,540.21	8.84	18
Tonalea (Cow Springs N.)	378,000.00	--	--*
Steamboat	60,000.00	--	--*

*Only ONHIR contributed to the project on behalf of ONHIR clients.

ATTACHMENT C

GAO
United States
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Washington, D.C. 20548

Resources, Community, and
Economic Development Division

B-260985

April 27, 1995

The Honorable Ralph Regula
Chairman
The Honorable Sidney R. Yates
Ranking Minority Member
Subcommittee on Interior
and Related Agencies
Committee on Appropriations
House of Representatives

More than a century ago, a dispute originated between the Navajo and Hopi tribes over reservation land in northeastern Arizona. Members of both tribes lived in the disputed area, and conflicts arose over grazing and other uses of the land. On December 22, 1974, the Congress enacted the Navajo-Hopi Land Settlement Act (P.L. 93-531) to resolve the dispute by authorizing the relocation of Navajo and Hopi families that were living on land belonging to the other tribe. The Navajo and Hopi Indian Relocation Commission (now called the Relocation Office) was established to plan and implement a relocation program. Since fiscal year 1976, the Congress has appropriated almost $357 million for the Relocation Office to certify that program applicants are eligible for assistance, to acquire land and housing, and to provide counseling services. Applicants found to be ineligible for assistance can ask for a review of the decision by the Relocation Office. If they are dissatisfied with the Office's ruling, they can seek further review in a U.S. district court.

To address your Committee's concern about the seemingly slow pace of relocations, we agreed to determine

-- whether the Relocation Office certified more families for benefits than it relocated in calendar year 1994 and, if so, why and

-- how many families remained to be relocated or certified as of December 31, 1994.

In summary, we found that as of December 31, 1994, 4,507 families had applied for relocation assistance, 3,302 families were certified for benefits, and 2,560 families had been relocated. In calendar year 1994, the Relocation Office certified more families for benefits (160) than it relocated (102). Certifications outnumbered relocations primarily because previous determinations of ineligibility were reversed and relocation is a slow process. As of December 31, 1994, 742 families certified for relocation assistance had not been relocated. Another 660 families found to be ineligible for assistance could have their original determination of ineligibility overturned during review, making them eligible for assistance. According to Relocation Office officials, up to 100 additional Navajo families have never applied for assistance but may be eligible if they request assistance.

BACKGROUND

Although the relocation process is complex, it involves only two major steps: certification of eligibility for assistance and relocation. To be certified as eligible by the Relocation Office's certification officer, an applicant must meet the program's criteria for being a resident and the head of a household. To meet the first criterion, the applicant must have been a legal resident[1] of the disputed land on December 22, 1974 (the date of the Settlement Act), and must not have moved there within the previous year. Generally, to meet the second criterion, the applicant must speak for or be responsible for all members of the household and must have acted in such capacity on or before July 7, 1986.[2] However, an applicant can later become the head of the household through circumstances such as a divorce or the death of the previous head of the household.

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[1]To be a "legal resident," an applicant need not have resided continuously on the land but must have maintained substantial, recurring contact with an identifiable homesite.

[2]In October 1984, the Congress imposed a July 1985 deadline for the receipt of relocation program applications; this deadline was subsequently challenged and, by court order, postponed to July 7, 1986.

Reviewing Determinations of Ineligibility

An applicant who is found ineligible for the program may ask for a review of the decision within the Relocation Office by the Office's hearing officer. This review must be requested within 60 days of the initial determination of ineligibility. The Office's review process entails an explanatory conference, a hearing, and an internal review. At any of these stages, the Office can uphold or reverse a determination of ineligibility. Also, at any stage of the review process, an applicant can choose to be represented by an attorney, who will be provided by the Navajo Nation or the Hopi Tribe.

An applicant who disagrees with the outcome of the Relocation Office's review may pursue a further review of the case in a U.S. district court. The applicant must do so, however, within 6 years of the Relocation Office's final decision. According to Relocation Office officials, court decisions have relaxed some of the Office's previous procedures for determining eligibility and, in some cases, have required the Office to reconsider an applicant's eligibility. For example, a district court recognized that some applicants had not received notice that their eligibility for the program had been denied and, therefore, they could not file a timely request for review. Accordingly, by order of the district court, the Office reconsidered the cases of nearly 800 applicants whom it had previously found ineligible.

In other cases, when applicants notified the Office that they intended to request a judicial review of the Office's determination of ineligibility, these determinations were again reviewed and then administratively reversed at the recommendation of the U.S. attorney. The U.S. attorney's recommendation was based on counsel's judgment that the Relocation Office could not legally defend its determination of ineligibility. For example, the U.S. attorney said that, in some cases, the Office had no legally defensible basis for questioning the word of applicants who had attested to meeting the criteria for eligibility. In such cases, the U.S. attorney recommended that the Office reverse its determination of ineligibility.

Relocating Families

Once an applicant has been certified as eligible for relocation, the Relocation Office assigns the family a counselor, who helps the family with the process of

relocation. First, a counselor discusses with the family the area in which it wishes to live. For example, some families may desire to stay on reservation land; other families may wish to move outside the reservation. Once the family has decided where it wants to relocate, the counselor helps it acquire the homesite. For families who wish to be on the reservation, the land must be leased from the tribe that owns it. For families who want to move off the reservation, the homesite must be purchased. Once this is done, other Office staff help the family acquire housing (either build a home or purchase an existing one); the house is paid for by the program. Once the family has moved into its new home, with financial assistance from the program, a counselor provides advice and assistance to help the family adjust to life in the new community.

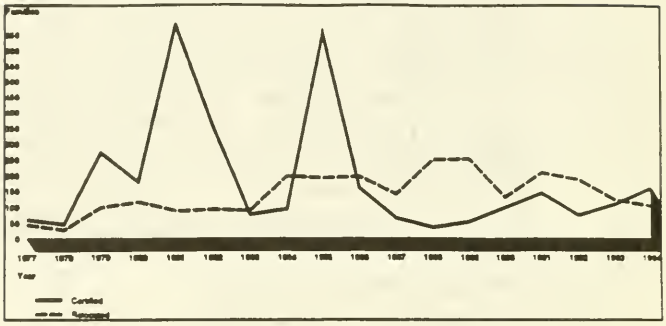
OVERVIEW OF PROGRAM'S RESULTS

As of December 31, 1994, 4,507 Navajo and Hopi families had applied for relocation benefits. Of these, 3,302 had been certified as eligible for assistance, and 2,560 of the certified families had been relocated. Another 1,205 applicants were determined to be ineligible for benefits. Of these, 346 had not requested a review of the determination and cannot do so now because the deadline for such a request has passed. The other 859 applicants requested a review of the determination of ineligibility. For 199 of these applicants, the request for a review was rejected, the review was dropped, or the time for further review has expired. For the remaining 660 applicants, the original determination of ineligibility could still be overturned, making them eligible for relocation benefits. For 302 of these applicants, the review is still ongoing within the Relocation Office. For the remaining 358 applicants, the review has been completed within the Office but further review in a U.S. district court remains an option.

NUMBER OF CERTIFICATIONS AND RELOCATIONS IN 1994

In 1994, the number of certifications exceeded the number of relocations for the first time since 1985. Specifically, the Relocation Office certified 160 families and relocated 102. In each of the 8 previous years, the number of relocations exceeded the number of certifications. Figure 1 shows the pattern of certifications and relocations from calendar years 1977 through 1994.

Figure 1: Certifications and Relocations, 1977-94

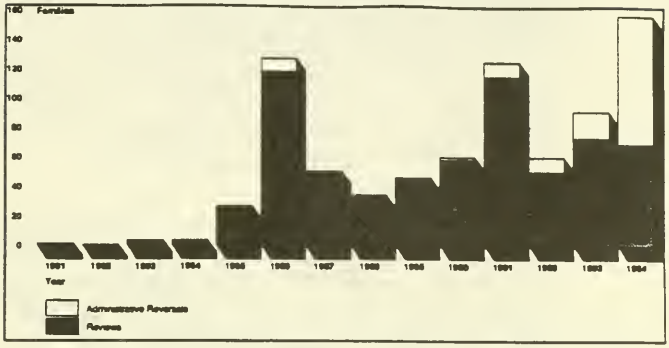


According to Relocation Office officials, certifications outnumbered relocations in 1994 primarily because the Office reviewed and reversed many of its past decisions of ineligibility. Of the 160 families certified in 1994, 157 were certified on the basis of such a reversal. Of these 157 reversals, 69 resulted from a review within the Office; the other 88 resulted from an administrative reversal recommended by the U.S. attorney. The remaining three certifications were new, resulting from a change in circumstances (e.g., a divorce).

According to program officials, 1994 was not the only year when many determinations of ineligibility were reversed. Figure 2 shows the number of certifications resulting from reviews and administrative reversals during calendar years 1981 through 1994.

B-260985

Figure 2: Certifications Resulting From Reviews and Administrative Reversals, 1981-94



Certifications also outnumbered relocations in 1994 because the relocation process is slow. According to Relocation Office officials, relocation is often lengthy and lags behind certification. For example, half of the families that the Office relocated in 1994 had been certified between 1981 and 1989. According to Office staff, the speed with which a family progresses through the relocation process depends on many factors. For example, a Navajo family that wishes to be relocated on the existing Navajo reservation must obtain a homesite lease; doing so requires the approval of the family claiming customary use of the land, the tribal chapter, and the Navajo Nation. Additionally, the scarcity of remaining available land near the Navajo-Hopi border makes it more and more difficult for a family to obtain a homesite lease on the reservation. And finally, because the program is voluntary, there is no certainty that an eligible family will complete the relocation process.

NUMBER OF REMAINING RELOCATIONS AND CERTIFICATIONS

As of December 31, 1994, 742 families certified for relocation assistance had not completed the relocation process. In addition, 302 families were seeking a review of their determination of ineligibility within the

Relocation Office, and another 358 families whose determination of ineligibility was not reversed by the Relocation Office could pursue their request for relocation assistance through a U.S. district court. Thus, some of these 660 families could have their original determination of ineligibility overturned, causing them to be certified and therefore eligible for relocation assistance. In addition, Relocation Office officials estimate that 50 to 100 Navajo families on Hopi lands have never applied for relocation benefits but may be eligible if they request assistance.

SCOPE AND METHODOLOGY

We obtained the information in this report from reviews of documents and clients' records and from interviews with officials at the Office of Navajo and Hopi Indian Relocation at Flagstaff, Arizona. We visited the Hopi and the Navajo reservations, where we met with representatives of both tribes. We conducted our review between August 1994 and March 1995 in accordance with generally accepted government auditing standards.

We discussed the contents of this report with the Executive Director of the Relocation Office and with other program officials. These officials generally agreed with the facts as presented, and we incorporated their comments where appropriate.

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If you or your staff have any questions, please call me on (202) 512-7756. Major contributors to this work were Sue Naiberk, Craig Richards, Felicia Turner, and Alan Wernz.

James Duffus III
Director, Natural Resources
Management Issues

(140795)

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